

# Exhibit A

**From:** Phalen, Erin (US)  
**To:** [Roy.Harris@fluor.com](mailto:Roy.Harris@fluor.com)  
**Cc:** [Lura.Lewis@fluor.com](mailto:Lura.Lewis@fluor.com)  
**Subject:** Draft NC Facility Agreement  
**Date:** Monday, November 30, 2015 3:39:42 PM  
**Attachments:** [FLP-100815-01 NC Facility.doc](#)  
[Exhibit A BAE Construction-Modified.doc](#)  
[Exhibit C S1 03-15 Modified.docx](#)  
[Exhibit D-Appendix J Modified.doc](#)  
[Exhibit G1 Wage Determination VA150001 Heavy Dredging \(All Counties\).pdf](#)  
[Exhibit G2 Wage Determination VA150039 Heavy and Sewer and Water \(Pulaski & Montgom\).pdf](#)  
[Exhibit G3 Wage Determination VA150124 Building \(Radford\).pdf](#)  
[Exhibit G4 Wage Determination VA150128 Highway \(Pulaski & Montgom\).pdf](#)  
[Exhibit H Radford Flow Downs W52P1J-11-G-0002.pdf](#)  
[Exhibit B USGOVA-CON 05-15.docx](#)  
**Importance:** High

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Hi Roy,

I spoke with Lura earlier and let her know I have the draft agreement (mostly) complete for the NC facility. I am still in need of a few things but am sending it to you for a once over to make sure we hit all of the areas that needed to be revised.

There are a lot of documents, and I may have to upload them to the NC Facility Sharepoint site (like we did for Mat Foundation) to make sure you receive them all, but this is a start. (The PO face (or Part 1) is not included, I am still waiting for the finalized milestone schedule and I don't have approval for the payment terms yet so they still say NET 45)

Attached please find:

Draft agreement-(part 2-4)

Ex. A-BAE Construction terms (modified)

Ex. B USGOVA-CON (standard)

Ex C S1 (Modified)

Ex D Appendix J (Modified)

Exhibit G 1-4 Wage Determinations (updated from the Prime)

Exhibit H Flowdowns

This also incorporates the proposals dated 11.25.15 but those are not attached due to size.

Please let me know if you have any questions or need additional information.

*Best Regards,*

*Erin Phalen*

Sr. Subcontract Administrator  
BAE Systems, Ordnance Systems Inc.

Voice: 540.505.4387

Email: [erin.phalen@baesystems.com](mailto:erin.phalen@baesystems.com)

 Please consider the environment before printing this e-mail.

# **Exhibit A-1**



By performing the above referenced work or by acknowledging receipt of this order or by performing any of the above work you agree to the terms and conditions set forth herein. These terms and conditions constitute an offer by the Corporation and said offer is expressly limited to acceptance on the exact terms set forth and no other terms and conditions shall be controlling: and these terms and conditions supersede the terms and conditions of your proposal or acknowledgement form, if any. The ACCEPTANCE COPY of this Contract shall be signed and promptly returned.

This order is accepted by vendor subject to all terms and conditions as stated herein.

**BAE SYSTEMS ORDNANCE SYSTEMS INC.    FLUOR FEDERAL SOLUTIONS, LLC**

Accepted by: \_\_\_\_\_

Name \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted by: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**PART 2 – SUPPLEMENTAL TERMS & CONDITIONS**Commented [BKA(S1): Part I is the FourthShift  
PO Print-out

**WHEREAS**, BAE Systems has been awarded Prime Contract Number W52P1J-11-G-0002, with the United States Government, as represented by Island Contracting Center (hereinafter, the "Customer", to perform the work defined in the Statement of Work; and

**WHEREAS**, in furtherance of the W52P1J-11-G-0002/Task Order 002, BAE Systems intends to acquire from SUBCONTRACTOR for and on behalf of the Customer such supplies and services as described in this Agreement and its attachments; and

**WHEREAS**, this Agreement represents the definitive contract authorization to SUBCONTRACTOR to initiate performance of the work described in this Agreement and its attachments;

**WHEREAS**, SUBCONTRACTOR wishes to provide BAE Systems the said work as set forth herein; and

NOW THEREFORE, in consideration of the premises and mutual agreements hereinafter set forth, the Parties to this Agreement mutually agree as follows:

**2.1 DEFINITIONS**

Throughout this document, the following terms are defined as:

**"Agreement"** means this executed Subcontract between BAE Systems Ordnance Systems Inc., (hereinafter also known as "BAE Systems", "Contractor", "Prime Contractor" or "Buyer") and Subcontractor (hereinafter also known as "Subcontractor", "Subcontractor", or "Vendor").

**"Buyer or Contractor"** means BAE Systems; the Party purchasing the supplies/services.

**"Buyer's Subcontract Representative"** means Subcontracts Administrator/Purchasing Agent or such employee of the Buyer, as the Subcontractor has received notice from the Buyer, as having authority to act for and in behalf of the Buyer.

**"Contracting Officer"** means the person having cognizance on behalf of the Government of the Prime Contract and any officer or civilian employee of the Government who is properly designated as the Contracting Officer of the Procuring Agency. The term includes, except as otherwise provided in this Subcontract, any authorized representative of such Contracting Officer acting within the limits of his authority.

**"Contractor or Prime Contractor"** means BAE Systems.

**"Engineering Change Proposal (ECP)"**: A proposal to the responsible authority recommending that a change to an original item of equipment be considered, and the design or engineering change be incorporated into the article to modify, add to, delete, or supersede original parts that are initiated by BAE. This is not going to be considered a Value Engineering Change but handled through the change order process.

**"FAR"** means the Federal Acquisition Regulation.

**"Government"** means the United States of America or any department or agency thereof.

**"Party"** and **"Parties"** means BAE Systems and/or the Subcontractor or both.

**"Procuring Agency"** means the department of the Government having cognizance of the prime contract.

**"Provision"** means any part of this subcontract or attachment thereto including, but not limited to, any referenced or incorporated agreement, specifications, documentation or data, or any articles/clause(s) or part(s) or combination(s) thereof.

**"Seller, Subcontractor or Vendor"** means the Party that had entered into this Subcontract with the Buyer.

**"Subcontract"** means this executed contractual agreement between Buyer and Subcontractor listing supplies/services to be furnished and the consideration therefore. It includes amendments, modifications, change orders, together with all attachments and exhibits thereto.

**"TO"** or **"TOs"** mean Task Order or Task Orders.

**"Value Engineering (VE)"**: VE is a functional analysis methodology that identifies and selects the best value alternative for designs, materials, processes, systems, and program documentation. VE applies to hardware and software; development, production, and manufacturing; specifications, standards, contract

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requirements, and other acquisition program documentation; facilities design and construction; and management or organizational systems and processes to improve the resulting product.

**"Value Engineering Change Proposal (VECP)":** Submitted by the contractor for review as to its Value Engineering (VE) applicability. If accepted by the government, normally the contractor is compensated for saving the government money. The cost savings ratio shall be 60% Contractor 40% Subcontractor

## 2.2 ADMINISTRATIVE MATTERS OF AUTHORITY

- a. Any notices or communication pertaining to this Subcontract originated by either Party shall be sent to the other by U.S. mail, other electronic means such as email, or an independent delivery service providing a receipt of delivery. Unless otherwise specified in writing, the addresses, phone number, e-mail address, of the parties hereto for the purpose of any such notice or communications shall be:
- b. BAE Systems' Contractual and Technical POCs are as follows:

<b>BAE Systems Contractual</b>		<b>BAE Systems Technical</b>	
Name:	Erin Phalen	Name:	Earl Lemon
Title:	Subcontract Administrator	Title:	NC Program Manager
Address:	Radford Army Ammunition Plant PO Box 1, State Route 114 Radford, VA 24141	Address:	Radford Army Ammunition Plant PO Box 1, State Route 114 Radford, VA 24141
Phone:	540-505-4387	Phone:	540-639-8329
Email:	<a href="mailto:erin.phalen@baesystems.com">erin.phalen@baesystems.com</a>	Email:	<a href="mailto:Earl.Lemon@baesystems.com">Earl.Lemon@baesystems.com</a>

- c. Subcontractors' Contractual and Technical POCs are as follows:

<b>Subcontractor Contractual</b>		<b>Subcontractor Technical</b>	
Name:	Roy Harris	Name:	Bryan Metoyer
Title:	Director, Contracts Management	Title:	Project Manager/Leed AP
Address:	100 Fluor Daniel Drive Greenville, SC 29607-2770	Address:	100 Fluor Daniel Drive Greenville, SC 29607-2770
Phone:	864.281.4879	Phone:	818.456-6661
Email:	<a href="mailto:Roy.harris@fluor.com">Roy.harris@fluor.com</a>	Email:	<a href="mailto:Bryan.metoyer@fluor.com">Bryan.metoyer@fluor.com</a>

d. Buyer's Subcontract Representative is the only individual authorized to direct Subcontractor's effort or amend any of the terms and conditions of this Subcontract. Unless directed by Buyer's Subcontract Representative, Subcontractor accepts full risk and responsibility and shall not assert a claim against BAE Systems or the Government, should Subcontractor follow direction from another source. All direction of effort to Subcontractor shall be in writing.

The following individuals are authorized to act as the Buyer's Subcontract Representative, and may direct the Subcontractor:

- i. Erin Phalen, Subcontract Administrator
- ii. Kelly Bate, Subcontracts Manager
- iii. Bob Creed, Director of Business Operations
- iv. Kelly Jones, Subcontract Administrator
- v. Tina Harris, Subcontract Administrator

e. Subcontractual issues that may arise during the life of this Subcontract must be handled in conformance with very specific public laws and regulations (e.g., Federal Acquisition Regulation). Only

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Buyer's Subcontract Representative is authorized to formally resolve such problems. Therefore, the Subcontractor is hereby directed to bring all such contractual problems to the immediate attention of Buyer's Subcontract Representative. The authority to issue cure/show cause notices, settle claims/disputes, amend terms and conditions and related contract actions is specifically retained by Buyer's Subcontract Representative. All matters settled herein shall be set forth in writing to all parties.

f. Subcontractor shall submit requests for information on matters related to this Subcontract, such as explanation of terms and contract interpretation, to Buyer's Subcontract Representative.

1. Buyer's Subcontract Representative is the only person authorized to make changes to this Subcontract to include:
  - i. Issue TOs, Purchase Orders, or Technical Direction Letters
  - ii. Issue Change Orders / Modifications
  - iii. Complete any and all administrative contractual actions with Subcontractor concerning those TOs / Purchase Orders issued
  - iv. Terminate TOs / Purchase Orders

### 2.3 PRIORITY RATING

This is a defense rated Purchase Order under the Department of the Army. The Subcontractor is required to follow all the provisions of the Defense Priorities and Allocations System (Regulation 15 CFR Part 700). Priority rating DOA6 applies to this Subcontract/Purchase Order.

### 2.4 CHOICE OF LAW

In accordance with USGOVFFP incorporated herein, the substantive and procedural laws of the State of Virginia hereunder shall govern this Subcontract Agreement without regard to its conflict of the law provision.

### 2.5 COMPOSITION OF SUBCONTRACTOR

If Subcontractor is comprised of more than one legal entity, each such entity shall be jointly and severability liable to BAE Systems under this subcontract agreement. The Subcontractor shall utilize only employees who are employed by the Subcontractor.

### 2.6 ENGLISH LANGUAGE DOCUMENTATION

All Subcontractor-prepared material to be furnished under this subcontract shall be written in the English language, and all monetary amounts will be calculated and based upon U.S. Dollars, unless otherwise agreed in writing by both Parties.

### 2.7 GENERAL INSURANCE & INDEMNIFICATION REQUIREMENT

During the entire performance of this Purchase Order, the Vendor shall, at its own expense, provide and maintain insurance coverage as more fully described in The terms and Conditions

### 2.9 PRE-WORK MEETING

If Subcontractor will be working in the Limited Area at the Radford Army Ammunition Plant, a pre-work meeting is required with the Technical POC and representatives from BAE Systems' Safety and Security departments.

### 2.10 PERIOD OF PERFORMANCE/OPTION YEARS

The anticipated period of performance of this subcontract is as follows:

Period	Date		Date
Base	October 8, 2015	Through	September 30, 2017

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BAE Systems may unilaterally extend the term of this Subcontract by giving written notice to the Subcontractor. Should BAE Systems exercise any option(s) hereunder, the existing terms and conditions of this Subcontract, as amended, shall apply during the option period(s).

**2.11 SAFETY**

Subcontractor retains the responsibility of providing a safe work environment for employees (and any authorized lower-tier subcontractors) as provided by law and regulation. When working in BAE Systems or Government facilities, Subcontractor shall also comply with applicable BAE Systems or Government safety rules and plans. BAE Systems' site-specific safety plans will be provided to Subcontractor upon request.

**(a) Occupational Safety and Health Requirements**

The subcontractor shall be responsible for ensuring the safety of all company employees, other working personnel, and government property. The subcontractor is solely responsible for compliance with the Occupational Safety and Health Act (OSHA) (Public Law 91-596) and the resulting applicable standards, OSHA Standard 29 CFR 1910 (general), 1915 (shipboard/submarine) and 1926 (shore), and for the protection, safety and health of their employees and any lower-tier subcontractors assigned to the respective task orders under this contract. It is the subcontractor's sole responsibility to make certain that all safety requirements are met and are documented as part of their quality management system.

**(b) Performance at Government Facilities**

In addition to complying to clause 5252.223-9200 Occupational Safety and Health Requirements, the subcontractor shall immediately (NLT 24 hrs. following an incident) report any accidents involving government or subcontractor personnel injuries or property/equipment damage to the subcontract administrator or project manager. The subcontractor is responsible for securing the scene and impounding evidence/wreckage until released by the subcontract administrator.

**(c) Safety Training**

The subcontractor shall be responsible to train all personnel that require safety training. Specifically, where subcontractors are performing work at Navy shore installations, that requires entering manholes or underground service utilities the subcontractor shall provide a qualified person as required in 29 CFR 1910 or 29 CFR 1926 or as recommended by the National Institute for Occupational Safety and Health (NIOSH) Criteria Document for Confined Spaces. Also, when subcontractors are required to scale a tower, all applicable personnel shall have Secondary Fall Protection and Prevention training.

**2.12 STATEMENT OF WORK**

Subcontractor, as an independent company and not as an agent of BAE Systems, shall provide the necessary facilities, personnel, equipment and materials to accomplish the assigned tasks within the parameters of this Subcontract Agreement and in accordance with the Statement of Work (SOW), Exhibit E.

**2.13 SUBCONTRACT TYPE**





**This is a Fixed Price Subcontract.** The Buyer shall pay the Subcontractor for the supplies, services and/or data delivered and accepted hereunder the firm fixed price stated in, Exhibit I. The price is not subject to any adjustment on the basis of the Subcontractor's cost experience in performing the Statement of Work.

#### **2.14 SUBCONTRACTING WITH LOWER TIER SUBCONTRACTORS**

Subcontractor is prohibited from any lower-tier subcontracting unless authorization is granted prior to such subcontracting, in writing by BAE Systems' Subcontracting Representative.

#### **2.15 SUBMISSION OF INVOICES**

a. Subcontractor shall submit by mail or an electronic invoice, together with any necessary supporting documentation, to the following addresses:

**Email:**            **osiaccountspayable@baesystems.com**

Direct Mail:  
**BAE SYSTEMS INC., Ordnance Systems Inc**  
**4509 West Stone Drive**  
**Kingsport, TN 37660**  
**ATTN: OSI Accounts Payable**

b. All packing slips and invoices must reference BAE Systems' Purchase Order/Subcontract Number and the appropriate Subcontract Line Item (SLIN).

e. Payment of invoices shall be Net **45** Days **FOLLOWING RECEIPT OF ACCURATE, COMPLETE AND APPROVED INVOICE**. Each invoice shall contain the following statement, which shall be dated and signed by an authorized representative of Subcontractor: **"This is to certify that the services set forth herein were performed during the period stated, and the costs reflected hereon are true and accurate."**

#### **2.16 SUCCESSORS OF PARTIES**

This Subcontract Agreement is binding on the parties and their respective legal representatives, trustees, successors and assignees.

#### **2.17 TERMINATION FOR CAUSE**

BAE Systems may terminate this subcontract, or any part hereof, for cause in the event of default by the Subcontractor, failure to comply with subcontract terms and conditions, or failure to provide Subcontracts Administrator, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Subcontractor for any amount for supplies or service not accepted and the Subcontractor shall be liable to BAE Systems for any and all rights and remedies provided by law. The Subcontractor will be provided an eight (8) day opportunity, after receipt of written notice from BAE Systems specifying failure, to cure defects in performance prior to termination for reasons other than gross negligence. If it is determined that BAE Systems improperly terminated this Subcontract for default, the subcontract may be restored.

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Cure Notice. If the Subcontract or a portion of the Subcontract is to be terminated for default before the end performance date, a "Cure Notice" is required. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains. If the time remaining in the subcontract is not sufficient to permit a realistic "cure" period of eight (8) days or more, the "Cure Notice" should not be issued.

**2.18 TRAVEL**

All travel shall be approved by BAE Systems' Technical Point of Contact (POC) prior to commencement. SUBCONTRACTOR shall be reimbursed for actual allowable, allocable, and reasonable travel costs, including applicable burdens and without profit, incurred during performance of this effort in accordance with the Joint Travel Regulations (JTR) currently in effect on the date of travel. When required, the SUBCONTRACTOR shall meet all the required clauses to travel to hostile areas.

**2.19 OPERATIONS AND STORAGE AREAS**

Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the subcontractor only with the approval of the BAE Systems Subcontracts Administrator and shall be built with labor and materials furnished by the subcontractor without expense to BAE Systems. The temporary buildings and utilities shall remain the property of the subcontractor and shall be removed by the subcontractor at its expense upon completion of the work. With the written consent of the BAE Systems Subcontract Administrator, the buildings and utilities may be abandoned and need not be removed.

**2.20 AVAILABILITY AND USE OF UTILITY SERVICES**

BAE Systems shall make all reasonably required amounts of utilities available to the subcontractor from existing outlets and supplies, as specified in the subcontract. The subcontractor shall carefully conserve any utilities furnished without charge. The subcontractor, at its own expense and in a workmanlike manner satisfactory to the BAE Systems Subcontracts Administrator, shall install and maintain all necessary temporary connections and distribution lines. Before final acceptance of the work by BAE Systems, the Subcontractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

**2.21 LIMITATION OF DAMAGES**

Limitation on Damages. Except as otherwise provided in this Subcontract, in the event of either Party's failure to perform in accordance with this Subcontract, whether such failure is occasioned by the acts or omissions of either Party, its respective suppliers, or the BAE Parties, either Party may pursue any and all damages and remedies available under this Agreement and/or applicable law. Except as otherwise provided in this Subcontract, damages and remedies that may be recovered by either Party shall be limited as follows: For all claims, regardless of the basis on which the claim is made, the applicable party's liability for damages arising under or related to this Subcontract shall be limited to the Subcontract Price for the goods or services to be provided by Subcontractor, "Subcontract Price" being defined as the cumulative value of Subcontract including all changes. Except as otherwise provided in this Subcontract, neither Party shall be liable for any indirect, special, incidental or consequential damages, including but not limited to lost profits or business interruption losses, whether arising under contract, warranty, express or implied tort, including negligence, or strict liability, arising at any time from any cause whatsoever in

connection with this Subcontract or performance hereunder, even if caused by the sole or concurrent or active or passive negligence, strict liability or other legal fault of either of the Parties, their members, directors, officers, employees, agents, representatives, parent companies, subsidiaries, affiliates, joint venture partners, successors and assigns, and each of their respective owners, partners, members, shareholders, directors, managers, officers, employees, agents, representatives and subcontractors at any tier.

**2.22 Contingency**

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There is \$14 million in the price of this contract for unforeseen contingencies, other than changes to the contract compensable under the Changes clause. If a contingency arises for which Fluor will use the contingency funding, Fluor will document the circumstances and the estimated amount. Prior to drawing on the funding the following procedure will be followed:

- The BAE Program Manager (PM) and Fluor Construction Operations Director will agree on the amount and use of the funding. If agreement is not reached,
- The matter will be resolved by the Fluor Government Contracts Manager and the BAE Subcontract Administrator. If they do not agree,
- The BAE Vice President/Deputy General Manager and the Fluor Services and Solutions Senior Vice President will seek agreement.
- If there is no agreement, Fluor will make the final determination on use of the contingency funding.

Upon completion of the Contract, Fluor and BAE will share in any remaining contingency funding on a 50:50 basis.

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**PART 3.0 – PRIME CONTRACT SPECIAL TERMS AND CONDITIONS**

Attached

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**PART 4.0 – ATTACHMENTS**

Exhibit A – BAE\_Construction 05/15 Modified

Exhibit B – USGOVA-CON 05-15

Exhibit C – S1 Version 03-15: Supplemental Terms and Conditions – Services Modified

Exhibit D – Appendix J Rev 9 Modified

Exhibit E – Technical Bid Package (Sharepoint)

Exhibit F – Milestone Schedule

Exhibit G – Wage Determinations (4)

Exhibit H Flowdown Clauses

Exhibit I Supplier Proposal (Nov. 25, 2015)

## **Exhibit A-2**

**BAE CONSTRUCTION (modified)**

**GENERAL PROVISIONS FOR CONSTRUCTION SUBCONTRACTS/PURCHASE ORDERS**

Note: If this Contract includes Design, BAEDOC S1 shall apply in addition

**SECTION I: General Provisions for All Orders**

**Section IA: General/Administrative Provisions**

1. Definitions
2. Acceptance of Contract/Terms and Conditions
3. Precedence
4. Contract Direction/Changes
5. Information
6. Survivability
7. Severability and Waivers
8. Payments
9. Taxes
10. Records
11. Entry on BAE SYSTEMS or Customer Property
12. Independent Contractor Relationship
13. SUBCONTRACTORS
14. Superintendence
15. Licensed Personnel
16. Offset Credit/Cooperation

**Section IB: Laws and Regulations**

17. Applicable Laws
18. Gratuities/Kickbacks/Ethical Conduct/Status
19. Export Control
20. Disputes/Jury Waiver
21. Waiver, Approval, and Remedies

**Section IC: Construction Requirements**

22. Site Investigations and Representations
23. Specifications and Drawings
24. Material and Workmanship
25. Operations, Storage Areas and Temporary Construction Facilities
26. Preservation of Existing Vegetation
27. Protection of Materials and Work Performed
28. Removal of Equipment and Cleanup
29. Construction Schedule/Time/Delays
30. Use of Structure Before Acceptance
31. Warranty and Correction of Defects
32. Inspection and Acceptance
33. Sustainable Development

**Section ID: Liability and Indemnification**

34. Indemnification
35. Bonds
36. Limitation of Liability
37. Insurance
38. BAE Systems Property
39. Notice of Labor Disputes
40. Intellectual Property
41. Reproduction and Use of Technical Data
42. Safety and Accident Prevention
43. Cessation of Work
44. Termination for Convenience
45. Termination for Default

**SECTION II: Additional Provisions for Orders under a US Government Prime Contract**

1. Priority Rating
2. Communication with the Government
3. Supplemental Terms and Conditions
4. Survivability
5. Applicable Laws
6. Records
7. CAS Noncompliance
8. Foreign Sales
9. Government Inspection at Source
10. Ocean Transport of Government-Owned Supplies
11. Controversies

## **Section 1A: General/Administrative Provisions**

### **1. DEFINITIONS**

The following terms shall have the meanings set forth below:

- a) "BAE SYSTEMS" means the BAE SYSTEMS legal entity as identified on the face of this Contract.
- b) "BAE SYSTEMS Procurement Representative" means the person authorized by BAE SYSTEMS's cognizant procurement organization to administer this Contract and may be referred to as Buyer, Subcontract Administrator or Material Representative in some exhibits.
- c) "Change Order," "Amendment," "Notification of Change," or "Modification" shall mean a formal written order describing the change to be made, issued and signed by a BAE SYSTEMS Procurement Representative.
- d) "Claim" means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment in a sum certain, the adjustment or interpretation of Contract terms or other allowable relief arising under this Contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this Contract. The submission may be converted to a claim under this Contract by complying with any submissions required, if there is a dispute either as to liability or amount.
- e) "Contract" and "Contract Documents" mean the instrument of contracting, such as "PO," "Purchase Order," "Subcontract" or other such type designation, including all referenced documents, exhibits, specifications, samples, drawings, shop drawings and attachments, and Modifications issued subsequent to the execution of the Contract. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed. The term "day" as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.
- f) "Contract Schedule" means the CONTRACTOR shall, prior to commencement of Work, prepare and submit for approval three (3) copies of a practicable schedule, showing the order in which the CONTRACTOR proposes to perform the Work, the dates on which CONTRACTOR will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing each portion. The Contract Schedule shall be in the form of a progress chart of suitable scale to indicate the percentage of Work scheduled for completion at any time.
- g) "Contract Sum" means the total amount payable by BAE SYSTEMS to CONTRACTOR for performance of the Work under the Contract Documents and includes all applicable federal, state and local taxes, duties and fees.
- h) "CONTRACTOR" means the Party identified on the face of the Contract with whom BAE SYSTEMS is contracting to furnish the Work.
- i) "Project" means the total construction required under the Contract Documents.
- j) "Site" shall mean the physical place or places where the construction work called for in this Contract will remain when work on it has been completed. It includes other adjacent or nearby property used by

the CONTRACTOR or SUBCONTRACTOR'S in such construction which can reasonably be said to be included in the Site".

- k) "SUBCONTRACTOR" means those having a direct Contract with the CONTRACTOR for the performance of any part of the work called for hereunder. The term shall also include one who merely furnishes material. Nothing contained in this Contract shall create any contractual relationship between BAE SYSTEMS and any SUBCONTRACTOR at any tier. Except as otherwise provided in this Contract, the term "Subcontract" means all contracts placed by the CONTRACTOR or lower tier SUBCONTRACTOR'S for the specific purpose of performing any portion of the work under this Contract, and includes but is not limited to purchase orders and changes, or modifications thereto.
- l) "Substantial Completion of the Work" is the date when the construction is sufficiently complete, in accordance with the Contract Documents, such that BAE SYSTEMS or BAE SYSTEMS' lessees or assigns can fully occupy or utilize the Work and the Project as intended.
- m) "Work" means all of the design and construction which CONTRACTOR is required to perform under the Contract Documents or can be reasonably inferred from the Contract Documents, and shall include all labor, tools, construction means, construction equipment, materials, supplies, facilities, services, scaffolding, appliances, water, heat, air conditioning, utilities, transportation, and everything reasonably necessary or proper to complete the design and construction of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

### **2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

- a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- b) CONTRACTOR's acknowledgment, acceptance of payment, or commencement of performance, shall constitute CONTRACTOR's unqualified acceptance of this Contract.
- c) Additional or differing terms or conditions proposed by CONTRACTOR or included in CONTRACTOR's acknowledgment hereof are hereby objected to by BAE SYSTEMS and have no effect unless expressly accepted in writing by BAE SYSTEMS.
- d) Any assignment of CONTRACTOR's contract rights or delegation of duties shall be void, unless prior written consent is given by BAE SYSTEMS. A change of control of CONTRACTOR shall constitute an impermissible assignment. However, CONTRACTOR may assign rights to be paid amounts due, or to become due, to a financing institution if BAE SYSTEMS is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of BAE SYSTEMS against CONTRACTOR. BAE SYSTEMS shall have the right to make settlements and/or adjustments in price without notice to the assignee. BAE SYSTEMS may freely assign this contract. Subject to the limitations relative to assignments, CONTRACTOR, administrators, executors, successors and assigns, hereby agree to the full performance of all of the covenants and agreements herein contained.
- e) If this is an undefinitized PO, by acceptance, CONTRACTOR agrees:



- i. to submit (if not already submitted);
  - a. a fixed price or cost and fee type quote/proposal, as appropriate to the type of PO noted elsewhere in this PO, and
  - b. supporting cost or pricing data if requested by BAE SYSTEMS,
- ii. to enter promptly into negotiations in good faith to definitize undefinitized issues, anticipating a definitized PO and for each of the above requirements, prior to the target dates set forth elsewhere in this PO. All provisions referenced in the PO shall apply. Federal Law, Executive Orders and Government Procurement Regulations applicable to a definitized PO of the type anticipated by this undefinitized PO shall apply.
- iii. to proceed immediately to procure materials and take such other actions as are proper and called for to ensure that the supplies may be delivered or services performed on time. CONTRACTOR is not authorized to incur obligations which would result in a termination liability to BAE SYSTEMS in excess of the Maximum Termination Liability amount set forth in this PO as of the anticipated definitization date set forth in this PO or such extension of time as may be granted by BAE SYSTEMS.
- iv. in the event this PO is not definitized by the anticipated definitization date set forth in this PO or within such extension of time as may be granted by BAE SYSTEMS, that this undefinitized PO shall expire automatically; in which event CONTRACTOR will be paid an amount not to exceed the maximum determinable in accordance with the termination provisions which apply to this PO.

### 3. CONTRACT DIRECTION/CHANGES

- a) Upon award of Contract to CONTRACTOR, Advanced Engineering Change Notices ("AECN") may be field authorized by a BAE SYSTEMS Field Representative due to project urgency during the course of the work if the change is within the general scope of the Project, but in no case shall said change be implemented unless first documented and signed by an authorized Procurement Representative. Authorized BAE SYSTEMS personnel shall be specifically named in the body of the Contract. CONTRACTOR shall provide a "Good Faith Estimate" of the costs to implement each AECN prior to proceeding with the change. The AECN will be signed by both parties and a copy provided to CONTRACTOR. CONTRACTOR shall provide a firm quotation to the BAE SYSTEMS Procurement Representative within seven (7) days of AECN issuance and negotiate in good faith to arrive at a final cost for the change. The Procurement Representative shall then ratify or adjust the AECN by formal Change Order.
- b) Only the BAE SYSTEMS Procurement Representative has authority to make changes in, to amend, or to modify this Contract on behalf of BAE SYSTEMS. CONTRACTOR shall not implement any changes or modifications to this contract (including contract specifications and quality control provisions) without first having received written authorization to do so from BAE SYSTEMS' Procurement.
- c) BAE SYSTEMS program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with CONTRACTOR's

personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under this clause of this Contract and shall not be the basis for equitable adjustment. If CONTRACTOR believes the foregoing creates an actual or constructive change, CONTRACTOR shall notify the BAE SYSTEMS Procurement Representative and shall not accept such direction or perform said action unless authorized by BAE SYSTEMS Procurement Representative.

- d) Except as otherwise provided herein, all notices to be furnished by the CONTRACTOR shall be sent to the BAE SYSTEMS Procurement Representative and designated Field Representative.
- e) BAE SYSTEMS may, at any time, exclusively by a written order signed by its Procurement Representative, and without notice to sureties, if any, make changes within the general scope of this contract in any one or more of the following:
  - i. Drawings, designs, or specifications when the supplies being furnished are to be specially manufactured for BAE SYSTEMS in accordance with the drawings, designs, or specifications;
  - ii. Method of shipment or packing;
  - iii. Place of inspection, delivery or acceptance;
  - iv. Work schedules; and/or
  - v. Any other matters affecting this contract.
- a) If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price, the delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by SELLER for adjustment under this article must be asserted in writing to BAE SYSTEMS' Procurement Representative no later than thirty (30) calendar days (five (5) calendar days for Ship Repair) after the date of receipt by SELLER of the written change authorization or within such extension as BAE SYSTEMS may grant in writing; BAE SYSTEMS may, in its sole discretion, consider any such claim regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, SELLER will diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of a change is included in SELLER's claim for adjustment, BAE SYSTEMS shall have the right to direct the manner of disposition of such property. BAE SYSTEMS shall have the right to examine any of SELLER's pertinent books and records for the purpose of verifying SELLER's claim.

- f) BAE SYSTEMS shall not be liable for any of Contractor's increased cost of performance that result from Contractor's implementation of changes or modifications that BAE SYSTEMS' Procurement Representative did not first approve in writing.
- g) BAE SYSTEMS and CONTRACTOR agree that if this Contract, or any order, ancillary agreement, or correspondence is transmitted electronically neither BAE SYSTEMS nor CONTRACTOR shall contest the validity thereof, on the basis that this Contract, or the order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without human intervention by a system intended for the purposes of generating same.
- h) The CONTRACTOR shall submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within seven (7) days from the date of receipt of the written order. However, if the BAE SYSTEMS Procurement Representative decides that the facts justify it, the BAE SYSTEMS Procurement Representative may receive and act upon a proposal submitted before final payment of the Contract.
- i) If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price, the delivery schedule, or both, and the contract shall be modified in writing accordingly.
- j) Prior to the issuance of a change order under this Contract, BAE SYSTEMS may solicit from the CONTRACTOR written agreement as to the maximum (in the case of an increase) or minimum (in the case of a decrease) adjustment to be made in the price and/or in the schedule (or time of performance), by reason of the change. BAE SYSTEMS may also solicit such agreement on limitations on the adjustments to any other provisions of the Contract which may be subject to equitable adjustment by reason of the change. The CONTRACTOR shall promptly submit a "not-to-exceed" (or "no-less-than") amount or maximum (or minimum) schedule adjustment when so requested by BAE SYSTEMS. Any such written agreement shall then be cited in the change order and upon its issuance shall be deemed to become part of the Contract. In no event shall the definitive equitable adjustment exceed the maximum (or be less than the minimum) price and/or delivery schedule (or time of performance) adjustments so established, nor otherwise be inconsistent with other adjustment limitations so established. Except with respect to such limitations, nothing contained herein shall affect the right of the Parties to an equitable adjustment by reason of the change, pursuant to this clause.
- k) Unless expressly stipulated elsewhere in this Contract as being excepted from this provision, wherever this Contract provides for submittal of designs, components, processes, or other items for review or approval by BAE SYSTEMS, such reviews or approvals shall not be construed as a complete check as to the adequacy of said design or item, nor as an agreement that the design or items will meet the requirements of the Statement of Work, nor as any change to the requirements of the Statement of Work. Such reviews and approvals shall in no way relieve the CONTRACTOR of the responsibility for any error or deficiency which may exist in the submitted design or other items, as the CONTRACTOR shall be

responsible for meeting all the requirements of the contract.

- l) If the CONTRACTOR's proposal includes the cost of property made obsolete or excess by the change, BAE SYSTEMS shall have the right to prescribe the manner of the disposition of the property.
- m) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the Contract as changed.

#### 4. INFORMATION

- a) Information provided by BAE SYSTEMS to CONTRACTOR remains the property of BAE SYSTEMS. CONTRACTOR shall comply with all proprietary information markings and restrictive legends applied by BAE SYSTEMS to anything provided hereunder to CONTRACTOR. CONTRACTOR shall not use any BAE SYSTEMS provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of BAE SYSTEMS. Information provided by BAE SYSTEMS shall be returned to BAE SYSTEMS upon completion of the Work.
- b) If the parties have entered into a Proprietary Information Agreement pertaining to the Work of this Contract, the terms and conditions of such Proprietary Information Agreement shall govern the protection and exchange of proprietary information between the Parties. CONTRACTOR shall not provide any proprietary information to BAE SYSTEMS without prior execution by BAE SYSTEMS of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of Work under this Contract.
- c) Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, shall be made by CONTRACTOR without the prior written approval of BAE SYSTEMS Procurement Representative.
- d) CONTRACTOR agrees not to reproduce, use, or disclose to any third party or use any information or other matter furnished by or acquired from BAE Systems or developed as a result of the services rendered under this Contract except to the extent required by law and as otherwise may be authorized in writing by an authorized agent of BAE Systems. CONTRACTOR agrees to obtain from its employees and agents a signed nondisclosure agreement acceptable to BAE Systems upon BAE Systems' request. CONTRACTOR shall insert the provisions of this Provision in any subcontract issued hereunder. Upon BAE Systems' request any such information or other matter, including but not limited to data and designs, including any copies, shall be returned to owner.
- e) BAE SYSTEMS shall be under no obligation to restrict disclosure or use of any information provided, either directly or indirectly, by CONTRACTOR unless and until a Proprietary Information Agreement is executed in writing by BAE SYSTEMS. In the absence of a Proprietary Information Agreement, BAE SYSTEMS shall have the unrestricted right to use and disclose all such information notwithstanding any specific legend or statement associated therewith.

#### 5. SURVIVABILITY

If this Contract expires, is completed or is terminated, CONTRACTOR shall not be relieved of those obligations contained in the following provisions:

- a) Applicable Laws  
Counterfeit Parts: Prevention and Notification  
Definitions

Disputes/Jury Waiver  
Export Control  
Furnished Property  
Independent Contractor Relationship  
Information  
Entry on BAE SYSTEMS or Customer Property  
Intellectual Property  
Records  
Parts Obsolescence  
Warranty

- b) Corresponding provisions to above as incorporated through Supplemental Terms and Conditions provision
- c) Representations and warranties made by CONTRACTOR in the Contract Documents

#### 6. SEVERABILITY AND WAIVERS

- a) Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.
- b) No deviation from the covenants contained in the Contract Documents, for any reason whatsoever and whether authorized or otherwise, shall be deemed to constitute a precedent or waiver with respect to the handling of any subsequent interpretation or application of any of the provisions of the Contract Documents.

#### 7. PAYMENTS

- a) BAE SYSTEMS shall pay the Contract Sum as provided in this Contract.
- b) BAE SYSTEMS will process progress payments monthly as the Work progresses, based on invoices of acceptable Work accomplished submitted by the CONTRACTOR and approved by BAE SYSTEMS. CONTRACTOR shall furnish a breakdown (Schedule of Values) of the total Contract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Project Site and, if approved in advance by BAE SYSTEMS, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing by the BAE SYSTEMS Procurement Representative or Field Representative. Payments for materials or equipment stored on or off the Project Site shall be conditioned upon submission by the CONTRACTOR of bills of sale or such other documentation satisfactory to BAE SYSTEMS' Procurement Representative to establish BAE SYSTEMS' title to such materials or equipment or otherwise protect BAE SYSTEMS' interest, including applicable insurance and transportation to the Project Site for those materials and equipment stored off the Project Site.
- c) Terms of payment shall be Net 45 days and shall be subject to reduction for overpayments or increase for underpayments on preceding payments to the CONTRACTOR. No invoice or authorization for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by BAE SYSTEMS or BAE SYSTEMS' lessees or assigns, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

d) The CONTRACTOR warrants that title to all Work, materials and equipment covered by an Invoice for Payment will pass to BAE SYSTEMS or BAE SYSTEMS' assigns either by incorporation in the construction or upon the receipt of payment by the CONTRACTOR, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, herein referred to in this Clause "8" as "liens," and that no Work, materials or equipment covered by an Invoice for Payment will have been acquired by the CONTRACTOR, or by any other person performing Work at the Project Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the CONTRACTOR or otherwise imposed by the CONTRACTOR or such other person, which would survive payment to the CONTRACTOR. This provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for all materials and Work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of BAE SYSTEMS to require the fulfillment of all of the terms of the Contract.

#### e) Lien Waiver Requirements.

i. Defined Terms. As used in this Clause 8, the following terms shall have the meanings set forth below:

Conditional Lien Waiver – a lien waiver from the applicable party, originally signed by that party (not by stamp or electronic signature) in a form that has been approved by BAE Systems which waives all rights of the signatory to any claim for any mechanics, materialmen or other lien, or any other title retention claim for that party, or for any party who may claim any such right as a result of any contractual or other agreement pertaining to the Work or the Project, conditioned only upon receipt of payment of the specified amount due to that party.

Unconditional Lien Waiver – a lien waiver from the applicable party, originally signed by that party (not by stamp or electronic signature) in a form that has been approved by BAE SYSTEMS but which waives all rights of the signatory to any claim for any mechanics, materialmen or other lien, or any other title retention claim for that party, or for any party who may claim any such right as a result of any contractual or other agreement pertaining to the Work or the Project, recognizing its receipt of payment for the amounts identified therein.

Major Subcontractors and Suppliers – each subcontractor and/or material supplier retained by the Contractor to perform all or any part of the Contractor's Work who has one or more contractual or other agreements, directly or indirectly, with the Contractor covering labor, services or materials furnished or to be furnished in connection with the Contractor's Work which provide for payment of amounts, in the aggregate, equal to or greater than Ten Thousand Dollars (\$10,000.00).

ii. Commencing with the Contractor's first Application for Payment, and with each subsequent Application, the Contractor will submit to BAE SYSTEMS Conditional Lien Waivers (as herein defined) covering the Contractor's Work for which the Contractor is seeking reimbursement. Commencing with the second Application and all subsequent Applications, the Contractor will submit to BAE SYSTEMS: (a) Unconditional Lien Waivers (as herein defined), covering the Contractor's Work for which the Contractor received payment on its immediately preceding Application; and (b) Conditional Lien Waivers covering the Contractor's Work for which the Contractor is seeking reimbursement on the current Application. The Conditional Lien Waivers and Unconditional Lien Waivers contemplated herein must be provided by all Major Subcontractors and Suppliers (as herein defined) who provided labor or materials in connection with the Contractor's Work for which the Contractor has requested and/or received payment on the pending Application. If the specified lien waivers are not provided as required, the Application will not be processed for payment until all required lien waivers are received by BAE SYSTEMS.

f) In making such progress payments there shall be retained ten (10) percent of the invoiced amount until final completion and acceptance of all work covered by the Contract; provided, however, that BAE SYSTEMS, at any time after fifty (50) percent of the Work has been completed, if BAE SYSTEMS finds that satisfactory progress is being made, may reduce the amount of retainage or make any of the remaining partial payments in full; and, providing further, that on completion, acceptance of the Work, and receipt of the required Unconditional Lien Waivers, payment may be made in full, including retained percentage thereon, less authorized deductions for incomplete or defective Work.

g) The CONTRACTOR may, if any SUBCONTRACTOR refuses to furnish a release or receipt in full, furnish a bond satisfactory to BAE SYSTEMS, to indemnify BAE SYSTEMS against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to BAE SYSTEMS all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.

h) The obligation of BAE SYSTEMS to make the payments required under the provisions of this Contract shall, in the discretion of BAE SYSTEMS, be subject to (1) reasonable deductions on account of defects in material or workmanship, and (2) any claims which BAE SYSTEMS may have against the CONTRACTOR under or in connection with this Contract. Any overpayments to the CONTRACTOR shall, unless otherwise adjusted, be repaid to BAE SYSTEMS upon demand.

i) The CONTRACTOR shall promptly pay each SUBCONTRACTOR, upon receipt of payment from BAE SYSTEMS, out of the amount paid to CONTRACTOR on account of such SUBCONTRACTOR'S work, the amount to which said SUBCONTRACTOR is entitled, reflecting the percentage actually retained, if any, from payments to the CONTRACTOR on account of such SUBCONTRACTOR'S work. CONTRACTOR shall, by an appropriate agreement with each SUBCONTRACTOR, require each SUBCONTRACTOR to make payments to their SUBCONTRACTOR'S in similar manner. BAE SYSTEMS may, at BAE SYSTEMS' sole discretion, make direct payments to CONTRACTOR'S SUBCONTRACTOR'S for amounts owed by CONTRACTOR to SUBCONTRACTOR'S and deduct the amount of these payments from the Contract Sum.

j) BAE SYSTEMS' Procurement Representative or Designated Field Representative may decline to authorize payment and may withhold BAE SYSTEMS' authorization in whole or in part, to the extent necessary to reasonably protect BAE SYSTEMS. BAE SYSTEMS shall be entitled at all times and without notice to any surety, set-off any amount owing at any time from CONTRACTOR to BAE SYSTEMS against any amounts payable at any time by BAE SYSTEMS.

k) CONTRACTOR hereby agrees that any refund, rebate, or credits (including any related interest) accruing to or received by CONTRACTOR, or SUBCONTRACTOR, that arise under this Contract and for which CONTRACTOR has received reimbursement from BAE Systems, shall be disclosed to BAE Systems and credited against the total costs incurred and paid by BAE Systems.

l) No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract

## 8. TAXES

- a) CONTRACTOR shall pay all federal, state and local taxes in effect on the date of the Contract with respect to the Work, including, without limitation, sales, consumer, use and other similar taxes required by law or local authority having jurisdiction.
- b) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government.
- c) To the extent that any purchase order includes Federal, state or local tax and BAE Systems pays such tax and subsequently all or a portion of that tax is refunded to the CONTRACTOR, the CONTRACTOR shall refund that amount to BAE Systems.
- d) Purchase, rental, or lease of supplies, tools, materials, equipment, and/or services necessary to perform the Work may be exempt from all or part of any sales or use tax imposed by the state, county, or other municipality having tax jurisdiction over the Work. An appropriate exception certificate or other document will be issued to the CONTRACTOR by BAE Systems in order to secure such tax exemption. Accordingly, the CONTRACTOR shall not bill BAE Systems for taxes for Work that is exempt from those taxes.
- e) Performance Based Payments (PBP), a.k.a. milestone payments: SELLER will include a certification with each PBP invoice that total actual costs incurred do not exceed the total value of all current and prior PBPs against the contract. At no time shall cumulative performance-based payments exceed cumulative contract cost incurred under this contract. To ensure compliance with this requirement, the Contractor shall, in addition to providing the information required by FAR 52.232-32, submit supporting information for all payment requests using the format in DFARS 252.232-7012 or a similar format as long as the same data outlined in DFARS 252.232-7012 is provided.

## 9. MAINTENANCE OF RECORDS

- a) Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for three (3) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, accounts receivable invoices, adjustments to the accounts, invoice registers, and other documents which are related to invoices, proposal, procurement, specifications, production, inspection, test, quality, quality processes and procedures, shipping and export, certifications, and receipt records.
- b) BAE SYSTEMS and its customer shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained. Audit rights shall be available to BAE SYSTEMS on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through the responsible Defense Contract Audit Agency (DCAA) representative, or a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants

## 10. ENTRY ON BAE SYSTEMS OR CUSTOMER PROPERTY

- a) CONTRACTOR'S personnel, while on BAE SYSTEMS' or Customer's premises, shall not sell, advertise or market any goods or services (other than the goods or services which may be the subject of this Contract) or memberships, or distribute printed, written or graphic materials without BAE SYSTEMS' written permission or as permitted by law.



- b) CONTRACTOR must coordinate in advance with BAE SYSTEMS access to BAE SYSTEMS' or Customer's premises.
- c) If CONTRACTOR'S personnel are to work at BAE SYSTEMS' facility with unescorted access, CONTRACTOR is required to have performed pre-employment background screenings at no charge to BAE SYSTEMS. CONTRACTOR employees and CONTRACTOR SUBCONTRACTOR'S will not be allowed access to work at BAE SYSTEMS facilities until written confirmation from CONTRACTOR has been received by the BAE SYSTEMS Procurement Representative stating that CONTRACTOR'S employees are cleared by CONTRACTOR to report to work. If the CONTRACTOR personnel in question holds a U.S. Government-granted Security clearance or access that has been validated by BAE SYSTEMS through JPAS (Joint Personnel Adjudication System) or via a visit certification, then a pre-employment background screening for that CONTRACTOR personnel is not required. Pre-employment background screenings must include the following: (a) Identity and Right to Work Verification (Criteria: A successful I-9 / E-Verify System Check) (b) Criminal Conviction Check, to the extent permitted by applicable law, for a minimum of previous seven years for each county lived in (Criteria: No record or if misdemeanors, occurrence greater than seven years prior, then the CONTRACTOR may choose to provide an explanation of the event to BAE SYSTEMS. BAE SYSTEMS will review the explanation against security requirements) (c) Education Verification for degreed positions only; and (d) Minimum of three years of employment history (Criteria: Employment history is confirmed as presented). CONTRACTOR'S SUBCONTRACTOR'S are not deemed employees of the CONTRACTOR for these purposes and shall perform their pre-employment background screenings and provide results to the CONTRACTOR.
- d) CONTRACTOR shall ensure that personnel assigned to work at BAE SYSTEMS' or Customer's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by BAE SYSTEMS, CONTRACTOR's personnel assigned to work at BAE SYSTEMS' or Customer's premises shall while at BAE SYSTEMS' or Customer's premises (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; and/or (v) not solicit BAE SYSTEMS' employees for employment during business hours. The CONTRACTOR shall additionally be responsible for requiring each employee engaged on the site to display such identification as may be approved and directed by BAE SYSTEMS. All prescribed identification shall immediately be delivered to BAE SYSTEMS, for cancellation, when such employee is no longer engaged on the site. When required by BAE SYSTEMS, the CONTRACTOR shall also obtain and submit fingerprints of all persons employed or to be employed on the project.
- e) All CONTRACTOR personnel, property, and vehicles entering or leaving BAE SYSTEMS' or Customer's premises are subject to search.
- f) CONTRACTOR shall promptly notify BAE SYSTEMS and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to BAE SYSTEMS' or Customer's property, while on BAE SYSTEMS' or its Customer's premises.
- g) BAE SYSTEMS may, at its sole discretion, remove or require CONTRACTOR to remove any specified personnel of CONTRACTOR from BAE SYSTEMS' or Customer's premises and request that such personnel not be reassigned to any BAE SYSTEMS premises under this Contract or any other contract. Any costs arising from or related to removal of CONTRACTOR's employee shall be borne solely by CONTRACTOR and not charged to this Contract.
- h) CONTRACTOR shall not assign any persons to work at BAE SYSTEMS facilities who are not a "U.S. Person" per 22 C.F.R. 120.15 (lawful permanent resident as defined by 8 U.S.C. 1101(a)(20)).
- i) CONTRACTOR shall be responsible for ensuring that all personnel it assigns to this Contract have all required work permits, appropriate licenses, and security clearances necessary to perform the Work. CONTRACTOR shall produce such records at any reasonable time upon BAE SYSTEMS request.
- j) CONTRACTOR acknowledges that BAE SYSTEMS and/or BAE SYSTEMS' customer have a zero tolerance policy for harassing behavior. CONTRACTOR, its employees, and its lower-tier SUBCONTRACTOR'S (when permitted) shall comply with the conduct requirements in effect at a worksite of BAE SYSTEMS or its Customer. BAE SYSTEMS and its Customer reserve the right to exclude or remove from any worksite, any individual who has been deemed careless, uncooperative, or whose continued employment has been determined by BAE SYSTEMS or its Customer to be contrary to the BAE SYSTEMS', the Customer's, or the public's interest. Exclusion from the worksite under the circumstances described in this clause shall not relieve CONTRACTOR from full performance of the Contract, nor will it provide the basis for an excusable delay or any claims against BAE SYSTEMS or its Customer.
- k) If this Contract was issued by BAE SYSTEMS Ship Repair Inc. or one of its subsidiaries, the Indemnity Agreement executed by SELLER in connection with becoming an approved subcontractor to BAE SYSTEMS shall apply.
- l) Escorting Employees.
  - i. In the interest of security, freedom of access to certain areas of BAE SYSTEMS is restricted. It may therefore be essential that CONTRACTOR employees engaged in Work at BAE SYSTEMS be escorted and supervised during the entire time they are within any fenced or restricted (controlled) area of BAE SYSTEMS owned or leased property.
  - ii. Certain rooms, areas and/or buildings within BAE SYSTEMS have been declared "CONTROLLED" for security purposes. The CONTRACTOR's responsibility for escorting and supervising the movement of CONTRACTOR's employees who work in CONTROLLED areas is assumed by BAE SYSTEMS. When CONTRACTOR's employees work in any other BAE SYSTEMS area not designated Controlled, the CONTRACTOR shall provide for the escorting and supervision of CONTRACTOR's employees in accordance with the requirements set forth below. The term "CONTRACTOR's employees" shall also include CONTRACTOR's SUBCONTRACTOR'S and SUBCONTRACTOR employees.
  - iii. If the total labor force involved does not exceed five (5) individuals, the CONTRACTOR's supervisor on the Project Site may serve as the escort provided the assigned duties will allow the supervisor to remain on the Project Site at all times that the CONTRACTOR has employees at work on the Project Site. The supervisor will submit proof of U.S. citizenship or as

a resident alien authorization to work in the United States. BAE SYSTEMS reserves the right to withdraw escort privileges from the supervisor and to require the CONTRACTOR to furnish another individual to act as escort at no additional cost to BAE SYSTEMS.

- iv. If the total labor force involved exceeds five (5) individuals, the CONTRACTOR must assign to the Project Site a sufficient number of employees whose time will be devoted *exclusively* to escorting and supervising the movement of the CONTRACTOR employees. Escort(s) must be mature, alert, competent individuals and of such physical and mental condition that they are able to remain with and escort the CONTRACTOR's employees at all times. Escort(s) must be able to furnish proof of U.S. citizenship or authorization to work in the United States as a resident alien. BAE SYSTEMS Security reserves the right to reject any individual designated as escort who is not performing or who is not capable of performing the escort duties.

- vi. All CONTRACTOR employees, who are designated as escorts, including supervisors, will be given a thorough indoctrination on security requirements by representatives of the BAE SYSTEMS Security Office. These escorts are accountable to BAE SYSTEMS and BAE SYSTEMS' Security Office for the proper fulfillment of escort duties for BAE SYSTEMS' CONTRACTOR. It is BAE SYSTEMS' prerogative, through periodic checks by the Security Office, to ascertain that the CONTRACTOR's escort is performing in accordance with security requirements.

- vi. The responsibilities of the CONTRACTOR's security escort(s) are essentially as follows:

- a. At the beginning and conclusion of the day's Work, escort the CONTRACTOR's employees (in a group) to and from the plant entrance and Project Site via the route designated by the BAE SYSTEMS Security Office.
- b. Keep the BAE SYSTEMS Security Office informed regarding the telephone number at which the escort can be reached.
- c. At the beginning of the Work, assign the nearest available restrooms or CONTRACTOR-supplied portable restrooms and drinking fountain for the use of the CONTRACTOR's employees and designate the most direct route to reach these facilities.
- d. At the beginning of the Work, instruct and familiarize all of the CONTRACTOR's employees with the location of the nearest plant clinic, stretcher, fire extinguisher and fire alarm box and instruct all CONTRACTOR employees of their proper application and use.
- e. When escorts deliver or return CONTRACTOR's employees to and from the Project Site, the escort must immediately verify that all CONTRACTOR's employees are accounted for.
- f. Ensure that the CONTRACTOR's employees do not use or handle any of BAE SYSTEMS' tools, machinery or other property that are not authorized by the

Contract and assure that all employees observe the "No Smoking" rule as well as all other rules for conduct and safety as designated by signs in the area.

- g. At frequent intervals throughout the day, verify that the CONTRACTOR's employees are all accounted for and located in the required Work area.

- h. Instruct CONTRACTOR's employees that the use of cameras, recording devices, radios, firearms, drugs, explosives, weapons, or intoxicants on BAE SYSTEMS property is prohibited.

- i. Immediately report any infraction of security requirements to BAE SYSTEMS Security Office.

- j. Instruct CONTRACTOR's employees of proper conduct and decorum on BAE SYSTEMS owned or leased property.

- k. Perform escort duties in accordance with security requirements, including but not limited to, escorting only during work hours and work days and not in controlled spaces.

#### 11. INDEPENDENT CONTRACTOR RELATIONSHIP

- a) CONTRACTOR's relationship to BAE SYSTEMS shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between BAE SYSTEMS and CONTRACTOR or BAE SYSTEMS and CONTRACTOR personnel, including CONTRACTOR'S SUBCONTRACTOR'S. CONTRACTOR personnel, including SUBCONTRACTOR'S, engaged in performing Work under this Contract shall be deemed employees of CONTRACTOR and shall not for any purposes be considered employees or agents of BAE SYSTEMS. CONTRACTOR assumes full responsibility for the actions, omissions and supervision of such personnel while engaged in Work under this Contract. BAE SYSTEMS assumes no liability for such CONTRACTOR personnel.
- b) Nothing contained in this Contract shall be construed as granting to CONTRACTOR or any personnel of CONTRACTOR rights under any BAE SYSTEMS benefit plan. CONTRACTOR shall provide and maintain all insurance and benefits required by law, including but not limited to workers' compensation insurance.
- c) CONTRACTOR personnel: (i) will not remove BAE SYSTEMS or its Customer's assets from BAE SYSTEMS' or Customer's premises without BAE SYSTEMS written authorization; (ii) will use BAE SYSTEMS or Customer assets only as authorized in writing by the BAE SYSTEMS Procurement Representative for purposes of this Contract; (iii) will only connect with, interact with or use BAE SYSTEMS' computer networks and equipment, communications resources, programs, tools or routines as BAE SYSTEMS agrees, all at CONTRACTOR's risk and expense, and then only in compliance with applicable BAE SYSTEMS policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. BAE SYSTEMS may monitor any communications made over or data stored in BAE SYSTEMS computer networks and equipment or communications resources.
- d) CONTRACTOR shall be responsible to BAE SYSTEMS for the acts and omissions of CONTRACTOR's employees and agents, CONTRACTOR's Sub-CONTRACTOR'S, and their agents, employees and subcontractors, and all other persons performing any of the Work, except public utility employees.

#### 12. SUBCONTRACTORS

- a) The CONTRACTOR shall at all times select qualified vendors and SUBCONTRACTOR'S for performance of all subcontract work and the furnishing of materials and supplies. Prior to commencement of necessary procurement on a subcontract basis, BAE SYSTEMS reserves the right to refuse or reject any

SUBCONTRACTOR or supplier. Nothing noted in any subcontract hereunder shall create any contractual relation between the SUBCONTRACTOR and BAE SYSTEMS, and, further, the rights of BAE SYSTEMS under this Contract shall not be nullified thereby.

- b) No subcontract shall be made by the CONTRACTOR for performing any Work herein contracted for, without the prior written approval of BAE SYSTEMS. When required by Contract Documents, CONTRACTOR shall utilize the SUBCONTRACTOR'S identified herein.
- c) The CONTRACTOR warrants that to the best of CONTRACTOR's knowledge, the SUBCONTRACTOR'S proposed by CONTRACTOR are reputable, skilled, reliable, competent, and qualified in the trade field in which the SUBCONTRACTOR'S are to perform on the Project.
- d) By appropriate agreement, written where legally required for validity, the CONTRACTOR shall require each SUBCONTRACTOR, to the extent of the Work to be performed by the SUBCONTRACTOR, to be bound to the CONTRACTOR by terms of the Contract Documents, and to assume toward the CONTRACTOR all the obligations and responsibilities which the CONTRACTOR, by the Contract Documents, assumes toward BAE SYSTEMS or others as specified therein. Each SUBCONTRACTOR agreement shall preserve and protect the rights of BAE SYSTEMS or others as specified therein under the Contract Documents with respect to the Work to be performed by the SUBCONTRACTOR so the subcontracting thereof will not prejudice such rights, and shall allow to the SUBCONTRACTOR, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the CONTRACTOR that the CONTRACTOR, by the Contract Documents, has against BAE SYSTEMS. The CONTRACTOR shall make available to each proposed SUBCONTRACTOR, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the SUBCONTRACTOR will be bound, and, upon written request of the SUBCONTRACTOR, identify to the SUBCONTRACTOR, terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.
- e) CONTRACTOR shall be responsible for providing all SUBCONTRACTOR'S with sufficient drawings, specifications, addenda, and other documents necessary to inform SUBCONTRACTOR'S fully of the requirements of the Contract Documents which pertain to or which might otherwise affect SUBCONTRACTOR'S work.
- f) CONTRACTOR shall remove personnel of SUBCONTRACTOR'S from the Project upon written request of the BAE SYSTEMS. The CONTRACTOR shall be responsible for requiring each employee engaged on the Project Site to display such identification as may be approved and directed by BAE SYSTEMS. All prescribed identification shall immediately be delivered to BAE SYSTEMS for cancellation, upon the release of any employee. When required by BAE SYSTEMS, the CONTRACTOR shall obtain and submit fingerprints of all persons employed or to be employed on the Project. BAE SYSTEMS reserves the right to reject any of CONTRACTOR's employees or have CONTRACTOR reject any SUBCONTRACTOR'S employees whose conduct is unacceptable to BAE SYSTEMS or for any other just cause.

#### 13. SUPERINTENDENCE

- a) The CONTRACTOR shall provide a competent superintendent with necessary assistants, sufficient and competent management and supervisory personnel on site subject to acceptance by BAE SYSTEMS and subject to continuing satisfaction to BAE SYSTEMS. Such superintendence and management shall efficiently

supervise the Work and be responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. If such personnel become unacceptable, BAE SYSTEMS will present the reasons for dissatisfaction to the CONTRACTOR in writing whereby the CONTRACTOR shall take immediate steps to replace such person(s).

- b) CONTRACTOR superintendence and/or management at the job site shall have the authority to commit the CONTRACTOR to agreements and amendments to this Contract to a sufficient monetary value that will assure the orderly progress of the Work. Upon acceptance of the Contract, CONTRACTOR shall provide BAE SYSTEMS with written notice as to designated personnel and their monetary authority and such authority shall be assumed to remain in force until written notice otherwise is received by BAE SYSTEMS.

#### 14. LICENSED PERSONNEL

Any design, engineering, architectural, or other professional services incorporated as part of this Contract, which is to be performed by the CONTRACTOR, and which requires the employment of licensed personnel, will be performed only by licensed personnel. The CONTRACTOR will be held to the same degree of responsibility and liability that a licensed person would be responsible and liable. The CONTRACTOR will not be liable for any greater or lesser degree of care, skill or responsibility for such licensed services than would be imposed on licensed personnel had they dealt directly with BAE SYSTEMS.

#### 15. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Contract, and any lower tier subcontracts, shall accrue solely to the benefit of BAE SYSTEMS. SELLER shall cooperate with BAE SYSTEMS in the fulfillment of any foreign offset/countertrade obligations.

#### Section 1B: Laws and Regulations

#### 16. APPLICABLE LAWS

- a) Unless specifically identified otherwise on a PO or under a master-type agreement, which is part of this Contract, all matters arising from or related to it shall be governed by and construed in accordance with the law of the State from which this Contract is performed. If the work is performed OCONUS, the law from the State from which this Contract is issued applies.
- b) (1) CONTRACTOR shall comply with all applicable laws, orders, rules, regulations, and ordinances. CONTRACTOR shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at CONTRACTOR's expense. CONTRACTOR shall carefully review the Contract Documents and if CONTRACTOR observes that any of the Contract Documents are at variance therewith in any respect, CONTRACTOR shall promptly notify BAE SYSTEMS in writing. CONTRACTOR shall be liable to BAE SYSTEMS for costs incurred by BAE SYSTEMS with respect to any such variance that CONTRACTOR could have observed and pointed out to BAE SYSTEMS but did not. CONTRACTOR shall be responsible for providing appropriate personal protective equipment (PPE) and fulfilling all other employer obligations as may be required by regulation, statute, or other appropriate authority.
- (2) CONTRACTOR shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.



Effective 01 January 2012, if this CONTRACT applies to work conducted in the State of California, CONTRACTOR certifies compliance with the California Civil Code 1714.43, and CONTRACTOR shall require its lower-tiered CONTRACTOR'S to comply with California Civil Code 1714.43.

(3) BAE SYSTEMS is a federal government contractor subject to the nondiscrimination and affirmative action compliance requirements of Executive Order 11246, as amended, Executive Order 13672, as amended, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. BAE SYSTEMS is committed to compliance with these nondiscrimination and affirmative action requirements. As part of our efforts to comply with these laws and their implementing regulations, we have developed and implemented equal employment opportunity and affirmative action policies and programs, which are designed to ensure that all qualified applicants and employees are treated without regard to such factors as race, color, religion, sex, national origin, disability, veteran status, or any other reason prohibited by law.

In accordance with the implementing regulations of these laws BAE Systems' General Provisions serves as notification to SELLER about our nondiscrimination and affirmative action policies, and also "requests appropriate action" of SELLER to ensure full compliance throughout the subcontracting chain under related federal contract(s).

- i. To the extent applicable, the equal employment opportunity and affirmative action requirements set forth in 41 C.F.R. Part 60-1.4(a) (women and minorities), 41 C.F.R. Part 60-250.5(a) and Part 60-300.5(a) (covered veterans), and the employee notice requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.
- ii. This contractor and subcontractor shall abide by the requirements of 41 CFR 60.741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities (If this procurement is  $\geq$  \$10,000.) Additionally, this contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans (if this procurement is  $\geq$  \$100,000).

(4) If: (i) BAE SYSTEMS' contract price or fee is reduced; (ii) BAE SYSTEMS' costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on BAE SYSTEMS; or (iv) BAE SYSTEMS incurs any other direct costs or damages solely as a result of any violation of applicable laws, orders, rules, regulations, or ordinances committed solely by CONTRACTOR, its directors, officers, employees, agents, suppliers, or SUBCONTRACTOR'S at any tier, BAE SYSTEMS may proceed as provided for in subparagraph (b)(5).

(5) Upon the occurrence of any of the circumstances identified in subparagraph (b)(4) BAE SYSTEMS may

make an offset reduction of corresponding amounts (in whole or in part) due CONTRACTOR under this Contract and/or may demand payment (in whole or in part) of the corresponding amounts. CONTRACTOR shall promptly pay amounts so demanded.

- c) CONTRACTOR represents and warrants that none of its officers, directors, employees, agents, CONTRACTOR'S, lower-tier SUBCONTRACTOR'S, or other related entities will provide to BAE SYSTEMS any information, which the disclosure or receipt of would violate the Procurement Integrity Act, 41 U.S.C. § 423, as currently amended. This includes third party bid or proposal information and source selection information, as defined by the Procurement Integrity Act and the FAR. Additionally, CONTRACTOR agrees to put in place effective controls that will ensure information that would violate the Procurement Integrity Act is not shared with BAE SYSTEMS.
- d) CONTRACTOR represents that each chemical substance constituting or contained in Work sold or otherwise transferred to BAE SYSTEMS hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended. Seller shall not deliver goods that contain any asbestos mineral fibers.
- e) CONTRACTOR agrees to submit Safety Data Sheets (SDS's) (formerly known as Material Safety Data Sheet) (U.S. Department of Labor Form OSHA-20, or equivalent), as prescribed in 29 CFR 1910.1200 (OSHA Hazard Communication Standard), for all potentially hazardous material, as defined in the Standard, five (5) days before delivery of the material to the Project Site. This obligation applies to all materials delivered under this Contract which will involve exposure to potentially hazardous materials or items containing these materials as defined in Federal Standard number 313 in effect on the date of delivery of the hazardous material. The Safety Data Sheets Sheet(s) must include the Contract number and be submitted to the BAE SYSTEMS Medical Department. Any RCRA or state-regulated hazardous waste generated while on BAE Systems property shall be transferred to the possession of BAE SYSTEMS for handling and disposal. Neither the requirements of this clause nor any act or failure to act by BAE SYSTEMS shall relieve the CONTRACTOR of any responsibility or liability for the safety of BAE SYSTEMS, CONTRACTOR, or Subcontractor personnel or property. The CONTRACTOR shall insert this clause, including this paragraph with appropriate changes in the designation of the parties, in Subcontracts at any tier involving hazardous material.
- f) For orders \$500,000 and above to be substantially performed outside of the United States: CONTRACTOR shall comply with the policy, controls, and reporting requirements as defined in U.S. Executive Order, 25 September 2012, Strengthen Protections Against Trafficking In Persons In Federal Contracts, Sec. 2. Anti-Trafficking Provisions subsection (2).
- g) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act: CONTRACTOR represents that in accordance with 22 C.F.R. 130, neither CONTRACTOR nor its SUBCONTRACTOR'S at any tier have paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work which are to be provided to BAE SYSTEMS under any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.
- h) In compliance with Dodd-Frank Act Section 1502, CONTRACTOR agrees to SEC Reporting Requirements for Issuers Using Conflict Minerals. Conflict minerals are: columbite-tantalite (coltan), cassiterite, wolframite, and gold, which are used to finance conflict in the Democratic Republic of Congo or adjoining country.
- i) CONFLICT OF INTEREST



- (a) Compliance with Laws: CONTRACTOR agrees to comply with all Federal, state and local laws and regulations as they relate to conflict of interest.

- (b) CONTRACTOR Certifications: By acceptance of this Contract, CONTRACTOR makes the following certifications:

i) CONTRACTOR certifies that neither CONTRACTOR, CONTRACTOR'S employees, representatives, nor agents, if any, assigned to carry out its obligations hereunder is an official or employee of the U.S. Government or an active member of the armed forces, unless such dual activity is permissible under applicable laws and regulations and approval required by such laws or regulations has been obtained in writing, and such written approval has been submitted to BAE Systems.

ii) CONTRACTOR certifies that CONTRACTOR has made a full disclosure of each instance where CONTRACTOR or any of CONTRACTOR'S employees, representatives or agents is currently providing to BAE Systems' customer, supplier, or competitor, under any regulatory statute, regulation or enforcement action, services similar to those provided for hereunder. CONTRACTOR further agrees to make disclosure to BAE Systems prior to entering into any such arrangement in the future.

iii) CONTRACTOR agrees that if at any time, including performance under this Contract, there is a change of circumstances that could raise an issue as to the existence of a conflict of interest relating to the certifications in 17(i)(b) above, CONTRACTOR will immediately notify BAE Systems in writing of the circumstances involved. CONTRACTOR further agrees that, if any circumstances arise which cause BAE Systems to conclude, in its sole judgment, that CONTRACTOR may be involved in a conflict of interest, as described in 17(i) (a) and (b) above, BAE Systems may immediately terminate this Contract in accordance with the Termination for Default provisions of this Contract. The foregoing shall be in addition to any other rights and remedies BAE Systems may have under this Contract or at law.

iv) CONTRACTOR, and any employees, representatives, and agents of CONTRACTOR, if any, in performance under this Contract, shall not solicit or receive any information, classified or unclassified, directly or indirectly, from the U.S. Government or any other source except in strict accordance with all laws, regulations and BAE Systems policies. In the event BAE Systems concludes, in its sole judgment, that a violation of this paragraph iv) has occurred, such a violation shall be considered a noncurable breach, and BAE Systems shall immediately terminate this Contract in accordance with the default provisions of this Contract. Such termination shall be in addition to any other rights and remedies BAE Systems may have under this Contract or at law.

- (c) CONTRACTOR further agrees to include this clause or an equivalent in all subcontracts or purchase orders issued hereunder.

#### 17. GRATUITIES/KICKBACKS/ETHICAL CONDUCT/STATUS

- a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by CONTRACTOR, to any employee, agent or representative of BAE SYSTEMS with a view toward securing favorable treatment as a supplier.

- b) BAE Systems may, by written notice to CONTRACTOR, terminate for default the right of CONTRACTOR to proceed under this order if BAE Systems has reasonable cause to believe that gratuities (in the form of entertainment, gifts or otherwise) or kickbacks were offered or given by CONTRACTOR, or any agent or representative of CONTRACTOR with a view toward securing this Contract or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to the performance of this Contract.

- c) In the event this Contract is terminated as provided in paragraph "b" above, BAE SYSTEMS shall be entitled to pursue the same remedies against the CONTRACTOR as BAE SYSTEMS could pursue in the event of a breach of a Contract.

- d) BAE SYSTEMS maintains an ethics program that includes a written code of conduct, training and awareness for all employees, details of which can be found at [http://www.baesystems.com/article/BAES\\_020436/code-of-conduct-and-key-policies?afri.oop=4019190583000](http://www.baesystems.com/article/BAES_020436/code-of-conduct-and-key-policies?afri.oop=4019190583000). Failure to comply with the Global Code of Conduct shall be considered a material breach and shall be grounds for termination of this Contract.

- e) Notification of Debarments/Suspension Status. The CONTRACTOR shall provide immediate notice to the BAE SYSTEMS Procurement Representative in the event of the CONTRACTOR or a SUBCONTRACTOR being suspended, debarred, proposed for debarment or declared ineligible for the award of contracts by any Federal Agency, during the performance of this Contract.

#### 18. EXPORT CONTROL

- a) CONTRACTOR shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2799aa-2, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, the Export Administration Regulations, 15 C.F.R. 730-774, and the regulations of the Office of Foreign Assets Control (31 C.F.R. Parts 500-595). CONTRACTOR shall obtain all required export licenses and agreements necessary to perform CONTRACTOR'S Work, as applicable.

- b) CONTRACTOR shall comply with all applicable United States anti-boycott laws and regulations, including but not limited to, the requirements of the Export Administration Regulations, 15 C.F.R. 760, and the Internal Revenue Code, 26 U.S.C. 999, including the requirements on reporting anti-boycott requests to the U.S. Government. CONTRACTOR shall provide to BAE SYSTEMS within 30 days of submittal a copy of any anti-boycott report made to the U.S. Government that involves this Contract.

- c) Without limiting the foregoing, CONTRACTOR shall not transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a United States Government export license, technical assistance agreement, or other authority. The restrictions on the transfer of export controlled data apply equally to data furnished by BAE SYSTEMS and to any such data incorporated in documents generated by CONTRACTOR. Additionally, no disclosure of data furnished by BAE SYSTEMS can be made unless and until BAE SYSTEMS has considered the request and provided its written approval through contractually authorized channels. CONTRACTOR will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.

- d) Further, a United States Government export license, export agreement, or applicable license exemption or exception shall be obtained by CONTRACTOR prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R. 120.16.
- e) CONTRACTOR shall notify in writing the BAE SYSTEMS Procurement Representative if any use, sale, import or export by BAE SYSTEMS of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to CONTRACTOR.
- f) CONTRACTOR shall immediately notify in writing the BAE SYSTEMS Procurement Representative if CONTRACTOR is listed in any Denied Parties List or if CONTRACTOR's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- g) If CONTRACTOR is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, CONTRACTOR represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.
- h) Where CONTRACTOR is a signatory under a BAE SYSTEMS export license or export agreement (e.g. Technical Assistance Agreement, Manufacturing License Agreement), CONTRACTOR shall provide immediate written notification to the BAE SYSTEMS Procurement Representative in the event of changed circumstances affecting said license or agreement.
- i) Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve BAE SYSTEMS of its obligations under this Contract. Provided that CONTRACTOR has diligently pursued obtaining such license and, through no fault of CONTRACTOR, such license has been denied, withdrawn, or terminated, CONTRACTOR shall also be relieved of its obligation under this Contract. In either event, this Contract may be terminated by BAE SYSTEMS without additional cost or other liability.
- j) If the technical data required to perform this Contract is subject to the United States International Traffic in Arms Regulations (ITAR), CONTRACTOR shall comply with all export licenses, and the following:
- i. The technical data shall be used only in performance of Work required by this Contract; and
  - ii. The data shall not be disclosed to any Non-U.S. Person, including lower-tier SUBCONTRACTOR'S within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by BAE SYSTEMS and to any such data incorporated in documents generated by CONTRACTOR; and
  - iii. Any rights in the data may not be acquired by CONTRACTOR or any other Non-U.S. Person; and
  - iv. CONTRACTOR shall return, or at BAE SYSTEMS' direction, destroy all of the technical data exported to CONTRACTOR pursuant to this Contract upon fulfillment of its terms; and
- v. Unless otherwise expressly directed by BAE SYSTEMS, CONTRACTOR shall deliver the Work only to BAE SYSTEMS or to an agency of the U.S. Government.
- k) In compliance with ITAR, CONTRACTOR is registered with the United States Office of Defense Trade Controls.
- l) See BAE SYSTEMS Ship Repair Inc. Addendum for additional terms applicable to this EXPORT CONTROL section for work performed for BAE SYSTEMS Ship Repair Inc. and its subsidiaries.
19. **DISPUTES/JURY WAIVER (See BAE SYSTEMS Ship Repair Inc. Addendum for additional terms applicable to this Disputes/Jury Waiver section for work performed for BAE SYSTEMS Ship Repair Inc. and its subsidiaries.)**
- a) All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph b) of this provision. Until final resolution of any dispute hereunder, CONTRACTOR shall diligently proceed with the performance of this Contract as directed by the BAE SYSTEMS Procurement Representative.
  - b) BAE SYSTEMS and CONTRACTOR agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, BAE SYSTEMS AND CONTRACTOR AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE FROM WHICH THIS CONTRACT IS PERFORMED; AND BAE SYSTEMS AND CONTRACTOR EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE FROM WHICH THIS CONTRACT IS PERFORMED WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT. IF THE CONTRACT IS OCONUS, THE STATE FROM WHICH THE CONTRACT IS ISSUED APPLIES. (For BAE SYSTEMS Ship Repair Inc. (and its subsidiaries) orders originating in California, please see the BAE SYSTEMS Ship Repair Inc. Addendum for further Disputes language.)
  - c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, BAE SYSTEMS AND CONTRACTOR EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS CONTRACT. CONTRACTOR AND BAE SYSTEMS FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY.
  - d) CONTRACTOR hereby agrees to waive all applicable statutes of limitations applicable to any BAE SYSTEMS action against CONTRACTOR under this PO until one (1) year after all such statutes applicable to any action by BAE SYSTEMS' Customer against BAE SYSTEMS based on alleged breaches of requirements of BAE SYSTEMS' higher-tier contract occurring, in whole or in part, by reason of the alleged actions or inactions of CONTRACTOR constituting noncompliance by CONTRACTOR with requirements of this PO; until one (1) year following the expiration of all applicable statutes of limitation applicable to BAE SYSTEMS' Customer's action against BAE SYSTEMS.
20. **WAIVER, APPROVAL, AND REMEDIES**

- a) Failure by BAE SYSTEMS to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of BAE SYSTEMS thereafter to enforce each and every such provision(s). Neither BAE Systems' preliminary or conceptual designs, review, approval or acceptance of, nor payment for, any of the services performed under this Contract shall be construed to act as a waiver of any rights under the Contract of any cause of action arising out of the performance of the Contract, and CONTRACTOR shall remain liable in accordance with applicable law for all direct and consequential damages to BAE Systems caused by CONTRACTOR's negligent or faulty performance of any of the services furnished hereunder.
- b) BAE SYSTEMS's approval of documents shall not relieve CONTRACTOR from complying with any requirements of this Contract.
- c) The rights and remedies of BAE SYSTEMS in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

### **Section 1C: Construction Provisions**

#### **21. SITE INVESTIGATIONS AND REPRESENTATIONS**

- a) The CONTRACTOR represents that it has investigated and satisfied itself as to the nature and location of the work, the general and local conditions, including but not limited to those bearing upon transportation, disposal, handling and storage of materials; the availability of labor, water, electric power, and roads; the uncertainties of weather, river stages, tides, or similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the prosecution of the Work and all other matters upon which information is reasonably obtainable and which can in any way affect the Work or the cost thereof under this Contract.
- b) The CONTRACTOR further represents that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site including all exploratory work done by BAE SYSTEMS, as well as from information presented by the drawings and specifications.
- c) Failure by the CONTRACTOR to acquaint itself with all available information shall not relieve it of responsibility for successfully performing the Work. BAE SYSTEMS assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR based on the information made available by BAE SYSTEMS or for any understandings reached or representations made by any of its officers, employees or agents prior to the execution of this Contract, unless (1) such understanding or representations are expressly stated in this Contract and (2) this Contract expressly provides that the responsibility therefor is assumed by BAE SYSTEMS.
- d) Where alterations of and/or additions to existing construction are required under this Contract, the CONTRACTOR shall verify all dimensions and determine all existing conditions which may affect its work and shall be responsible for the accuracy of such dimensions and determinations.
- e) The parties acknowledge and agree that CONTRACTOR has represented that it has the requisite expertise to undertake the performance of the work contemplated by this Contract, and that BAE Systems,

in reliance on such representation, has entered into this Contract.

#### **22. SPECIFICATIONS AND DRAWINGS**

- a) CONTRACTOR shall comply with all specifications and drawings set forth in the Statement of Work hereof. All Work called for in said specifications and drawings shall be accomplished in accordance with the applicable national and local codes and standards. If required by the Contract Documents, the CONTRACTOR is responsible for the preparation, by a licensed architect/engineer, of drawings setting forth in detail the requirements for the construction of the Work and Project, based upon all applicable codes, laws or regulations which have been enacted as of the date of this Contract. Construction of the Work and Project by CONTRACTOR shall be in accordance with these drawings and the specifications. Any approval by BAE SYSTEMS of the drawings shall be binding for layout and aesthetics and shall not relieve CONTRACTOR from CONTRACTOR's professional responsibility for the design and architectural integrity and function of the Work and Project.
- b) The CONTRACTOR shall keep on the site a copy of the drawings and specifications and shall at all times give BAE SYSTEMS access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to BAE SYSTEMS, who shall promptly make a determination in writing. Any adjustment by the CONTRACTOR without this determination shall be at its own risk and expense. BAE SYSTEMS shall furnish from time to time such detail drawings and other information as may be considered necessary, unless otherwise provided.
- c) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications or which are customarily performed, shall not relieve the CONTRACTOR from performing such omitted or misdescribed details of work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications. CONTRACTOR shall carefully review the Contract Documents and if CONTRACTOR observes that any of the Contract Documents are at variance therewith in any respect, CONTRACTOR shall promptly notify BAE SYSTEMS in writing. CONTRACTOR shall be liable to BAE SYSTEMS for costs incurred by BAE SYSTEMS with respect to any such variance that CONTRACTOR could have observed and pointed out to BAE SYSTEMS but did not.
- d) The CONTRACTOR shall check all drawings furnished him immediately upon their receipt and shall promptly notify BAE SYSTEMS of any discrepancies. Dimensions marked on drawings shall in general be followed in preference to scale measurements. Large scale detail drawings shall in general govern small scale drawings. The CONTRACTOR shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby. When measurements are affected by field conditions, the CONTRACTOR shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings.
- e) Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall not be made until written authority is obtained from BAE SYSTEMS.
- f) The CONTRACTOR shall lay out its work from base lines and grades established by BAE SYSTEMS and shall be responsible for all measurements in connection therewith. The CONTRACTOR shall, at its own expense, furnish all stakes,



templates, platforms, equipment, and ranges and labor that may be required in setting and cutting, or laying out any part of the Work. The CONTRACTOR will be held responsible for the proper execution of the Work to such lines and grades as may be established or indicated by BAE SYSTEMS, and all stakes or other marks thus established shall be preserved by it until their removal is authorized by BAE SYSTEMS. BAE SYSTEMS will furnish, on request from the CONTRACTOR, all location and limit marks reasonably necessary for the conduct of the Work.

- g) All drawings shall become the property of BAE SYSTEMS, and BAE SYSTEMS shall be entitled, without further payment or liability to the CONTRACTOR and without further permission to use such drawings and to reproduce them; provided, however, the use of such drawings shall not imply a license to BAE SYSTEMS under any patent or shall not be construed as affecting the scope of any license otherwise granted to BAE SYSTEMS under any patent.
- h) The CONTRACTOR shall furnish to BAE SYSTEMS for all phases of the Work under specification sections wherein they apply, a sufficient number of submittals so that BAE SYSTEMS can retain copies. Submittals include, but are not limited to, complete sets of certified shop drawings, fabrication and welding procedures, specifications, reports, any applicable standards, and/or catalog data including vendors' delivery dates. Submittals will be marked "approved", "approved as noted", or "disapproved". Submittals marked "approved" or "approved as noted" need not be resubmitted. Submittals marked "disapproved" shall be resubmitted within seven (7) calendar days. All submittals shall be "approved" or "approved as noted" before starting fabrication.
- i) BAE SYSTEMS review and/or approval of submittals shall not relieve the CONTRACTOR from the responsibility of producing completed and installed Work in strict conformance with the Contract requirements. BAE SYSTEMS will not assume the responsibility for searching out deviations in the CONTRACTOR's submittals or any specifications indicated by the CONTRACTOR on submittals. It is understood that the review and/or approval by BAE SYSTEMS of the CONTRACTOR's submittals shall not be construed as a complete check as to their adequacy, nor as an agreement that the submittal will meet the requirements of the Contract. Such reviews and/or approvals shall in no way relieve the CONTRACTOR for any error or deficiency which may exist in the submittal as the CONTRACTOR shall be responsible for meeting all requirements of the Contract.
- j) In the event the Work set forth in the specifications and drawings does not comply with requirements within the applicable national or local codes and standards, the CONTRACTOR shall notify BAE SYSTEMS of such fact and BAE SYSTEMS may, by issuing a Change Order in accordance with the provisions of the Changes clause hereof, authorize compliance by the CONTRACTOR with the requirements of the applicable national or local codes and standards.
- k) The CONTRACTOR shall provide to BAE SYSTEMS, one (1) set of drawings which accurately portray "as-built" conditions of all construction items within the Contract, including schematic diagrams covering installations of all electrical, mechanical and pneumatic controls, if any. Each of these drawings shall be neatly and clearly marked-up (in red) to show all variations between the as-built construction and that indicated or specified by the Contract documents. Where a choice of material, equipment and/or methods is permitted herein, or where variations in the scope or character of the Work from that indicated or specified is permitted by

subsequent change to the Contract, such choices or variations shall be reflected on these drawings. The as-built drawings shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the as-built construction. All of the required as-built drawings will be delivered to BAE SYSTEMS within twenty (20) days after completion of the Work. The Work covered by such manuals shall not be reviewed or accepted for final payment until BAE SYSTEMS has reviewed those manuals. BAE SYSTEMS' designated personnel shall be given instructions by CONTRACTOR in the care, use, cleaning, maintenance and operation procedures for each item. CONTRACTOR shall be responsible for start-up of all systems and equipment specified in the Contract Documents.

- l) The requirements of this clause relating to the approval of documents by BAE SYSTEMS shall apply with equal force and effect to all items required by this Contract to be submitted for either "review"/"approval" or language of similar import.

## 23. MATERIAL AND WORKMANSHIP

- a) Unless otherwise specifically provided in this Contract, all equipment, material, and articles incorporated in the Work covered by this Contract are to be new and of the most suitable grade for the purpose intended. CONTRACTOR shall provide and pay for all labor, tools, construction means, construction equipment materials, supplies, scaffolding, appliances, facilities, services, water, heat, air conditioning, utilities, transportation, and everything reasonably necessary and/or proper to complete the design and construction of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- b) Unless otherwise specifically provided in this Contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the CONTRACTOR may at its option, use any equipment, material, article, or process which, in the judgment of BAE SYSTEMS is equal to that named. Where equipment, materials, articles, or patented processes are referred to in the specifications as "equal to" a particular standard, the question of equality shall be determined by a duly authorized representative of BAE Systems. The CONTRACTOR shall furnish to BAE Systems for its approval the name of the manufacturer of machinery, the model number and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which it contemplates incorporating in the work. Approvals of equals will not relieve the CONTRACTOR of responsibility for adequate fulfillment of the various parts of the work, or from specified guarantees and maintenance standards. Except where this CONTRACTOR is responsible for Design under this Contract, all requests for substitution which may be offered shall have been submitted for approval prior to award of this Contract. Unless specified in the Schedule of Equipment, no such substitution will be permitted and the CONTRACTOR will be deemed to have hereby agreed to furnish only the brand names specified in the contract documents.
- c) CONTRACTOR will acknowledge receipt of materials and equipment purchased or provided by BAE SYSTEMS for installation under the Contract Documents and will provide storage and protection for such materials and equipment.
- d) No materials or supplies for the Work contracted for shall be purchased by the CONTRACTOR or by any SUBCONTRACTOR working under CONTRACTOR which shall be subject to any chattel mortgage or under a conditional sale or other agreement in which an interest is retained by another party. The CONTRACTOR warrants that the title to all materials and supplies used by the CONTRACTOR in the

performance of the Work hereunder shall be clear of all encumbrances of any nature whatsoever.

- e) Unless waived in writing by BAE SYSTEMS, all tests or trials shall be made in the presence of a duly authorized representative of BAE SYSTEMS. When the presence of the inspector is waived, sworn statements of the test made and results thereof shall be furnished to BAE SYSTEMS by the CONTRACTOR immediately after the tests are made. Costs of all tests and trials, including concrete aggregate and cylinder tests, and soil analysis, shall be borne by the CONTRACTOR.
- f) All work under this Contract shall be performed in a skillful and workmanlike manner consistent with the level of care and skill ordinarily exercised by industry-standard CONTRACTOR'S under similar circumstances. CONTRACTOR shall be totally responsible for the professional quality, technical accuracy, feasibility, and coordination of all designs, drawings, specifications, and other services furnished by or for CONTRACTOR hereunder.

**24. OPERATIONS, STORAGE AREAS AND TEMPORARY CONSTRUCTION FACILITIES**

- a) All operations of the CONTRACTOR (including storage of materials) upon BAE SYSTEMS premises shall be confined to areas authorized or approved by BAE SYSTEMS. No unauthorized or unwarranted entry upon or passage through, or storage or disposal of materials shall be made upon BAE SYSTEMS premises. Premises adjacent to the construction will be made available for use by the CONTRACTOR without cost whenever such use will not interfere with other CONTRACTOR'S uses or purposes. The CONTRACTOR shall be liable for damage caused by it to BAE SYSTEMS premises. The CONTRACTOR shall hold and save BAE SYSTEMS, its officers and agents, free and harmless from liability of any nature or kind arising from any use, trespass or damages occasioned by its operations on premises of third persons.
- b) CONTRACTOR shall confine operations at the Project Site to geographic areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Project Site with any materials or equipment. No use will be made of the Project Site unless directly related to the Project.
- c) BAE SYSTEMS reserves the right to perform or allow the performance of Work related to the Project Site with BAE SYSTEMS' own forces and to award separate contracts in connection with other portions of the Project or other Work on the Project Site under these or similar General Conditions. Unless coordination by Contractor is otherwise required by the Contract and its attachments, BAE SYSTEMS will provide for the coordination of the Work of BAE SYSTEMS' own forces and of each separate contractor with the Work of CONTRACTOR, who shall cooperate therewith. If CONTRACTOR claims that delay or additional cost is involved because of such action by BAE SYSTEMS, CONTRACTOR shall make such claim as provided elsewhere in the Contract Documents.
- d) When separate contracts are awarded for different portions of the Project or other Work on the Project Site, the term CONTRACTOR in the Contract Documents in each case shall mean the CONTRACTOR who executes each separate BAE SYSTEMS-CONTRACTOR contract.
- e) CONTRACTOR shall afford BAE SYSTEMS and separate CONTRACTOR'S reasonable opportunity for the introduction and storage of their materials and

equipment and the execution of their work, and shall connect and coordinate CONTRACTOR's Work with BAE SYSTEMS and separate CONTRACTOR'S as required by the Contract Documents.

- f) If any part of CONTRACTOR's Work depends, for proper execution or results, upon the work of BAE SYSTEMS, or any separate contractor, CONTRACTOR shall, prior to proceeding with the Work, promptly report to BAE SYSTEMS any apparent discrepancies or defects in such other work that render the Work unsuitable for such proper execution and results. Failure of CONTRACTOR to report shall constitute an acceptance of BAE SYSTEMS' or separate contractor's work as fit and proper to receive CONTRACTOR's Work.
- g) Any costs caused by defective or ill-timed CONTRACTOR's Work shall be borne by the party responsible therefore.
- h) Should CONTRACTOR cause damage to the Work, equipment or property of BAE SYSTEMS or to other work on the Project Site, CONTRACTOR shall promptly remedy such damage.
- i) Should CONTRACTOR cause damage to the work or property of any separate contractor, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such separate contractor sues or initiates legal action or proceedings against BAE SYSTEMS on account of any damage alleged to have been caused by CONTRACTOR, BAE SYSTEMS shall notify CONTRACTOR who shall defend such proceedings at the CONTRACTOR's expense and if any judgment or award against BAE SYSTEMS arises from damage caused by the CONTRACTOR, CONTRACTOR shall pay or satisfy such judgment or award in addition to BAE SYSTEMS' cost and attorney's fees to defend such action. Should CONTRACTOR's Work or property be damaged by any separate contractor or BAE SYSTEMS, CONTRACTOR will be reimbursed for the reasonable cost to repair the damaged Work or for the actual damages to CONTRACTOR's property.
- j) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the CONTRACTOR only with the approval of BAE SYSTEMS and shall be built with labor and materials furnished by the CONTRACTOR without expense to BAE SYSTEMS. Such temporary buildings and/or utilities shall remain the property of the CONTRACTOR and will be removed by the CONTRACTOR at its sole expense upon the completion of the Work.
- k) The CONTRACTOR shall use only established roadways or construct and use such temporary roadways as may be authorized by BAE SYSTEMS. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the CONTRACTOR and any damaged roads, curbs, or sidewalks shall be repaired by, and at the expense of the CONTRACTOR, to BAE SYSTEMS's satisfaction.
- l) Unless BAE SYSTEMS' Field Representative authorizes the use of existing toilet facilities, CONTRACTOR shall furnish adequate toilet facilities for its employees. Toilet facilities shall conform to all local sanitary regulations and be located as approved by BAE SYSTEMS.
- m) The Work shall be done without interference with the ordinary use of streets, easements and passages and the CONTRACTOR shall cooperate with other CONTRACTOR'S of BAE SYSTEMS and BAE SYSTEMS employees as may be required by the circumstances or directed by BAE SYSTEMS. The CONTRACTOR shall not commit or permit any act which will interfere with the

performance of work by any other CONTRACTOR'S or BAE SYSTEMS employees whether at the site or not.

- n) Should the Project or any portion thereof not be completed within the Contract Schedule (as adjusted under the terms of the Contract Documents), BAE SYSTEMS or BAE SYSTEMS' lessees or assigns shall have the right to occupy any portion of the Project not so completed. In such event, CONTRACTOR shall not be entitled to any extra compensation on account of said occupancy by BAE SYSTEMS, or BAE SYSTEMS' lessees or assigns or normal full use of the Project, nor shall CONTRACTOR by BAE SYSTEMS', or BAE SYSTEMS' lessee's or assign's interfere in any way with said use of the Project, or be relieved of any of CONTRACTOR's responsibilities under the Contract Documents, including, without limitation, CONTRACTOR's obligation to complete the Project in accordance with the Contract Documents and the Contract Schedule.
- o) If a dispute arises between CONTRACTOR and separate CONTRACTOR'S as to their respective responsibility for cleaning up as required, BAE SYSTEMS may clean up and BAE SYSTEMS may charge the cost thereof to the CONTRACTOR or separate contractor as BAE SYSTEMS shall determine to be just.
- p) BAE SYSTEMS shall at all times have access to the Work and Project Site.

#### 25. PRESERVATION OF EXISTING VEGETATION

- a) The CONTRACTOR will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which do not unreasonably interfere with the construction as may be determined by BAE SYSTEMS. The CONTRACTOR will be responsible for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.
- b) Care shall be taken by the CONTRACTOR in felling trees, authorized for removal, to avoid any unnecessary damage to vegetation that is to remain in place. Any limbs or branches of trees broken during such operations, shall be trimmed with a clean cut and painted with an approved tree pruning compound. The CONTRACTOR may be required to replace or restore at its own expense all vegetation not protected and preserved as required herein that may be destroyed or damaged.

#### 26. PROTECTION OF MATERIALS AND WORK PERFORMED

- a) The CONTRACTOR shall at all times protect and preserve all materials, supplies and equipment of every description (including property which may be BAE SYSTEMS furnished or owned) and all Work performed. All reasonable requests of BAE SYSTEMS to enclose or specially protect such property shall be complied with. If as determined by BAE SYSTEMS, material, equipment, supplies and Work performed are not adequately protected by the CONTRACTOR, such property may be protected by BAE SYSTEMS and the cost thereof may be charged to the CONTRACTOR or deducted from any payments due the CONTRACTOR.
- b) CONTRACTOR is responsible for and required to remedy all damage or loss to any property, including property of BAE Systems or interruption of a utility service, caused in whole or in part by CONTRACTOR, CONTRACTOR's SUBCONTRACTOR or anyone employed, directed or supervised by CONTRACTOR.

- c) The necessary materials, tools and equipment to be utilized in the performance of this Contract shall be consigned to and delivered to or by the CONTRACTOR at the site and shall be CONTRACTOR's responsibility to unload and safeguard from all hazards.
- d) The CONTRACTOR shall protect the materials and Work from deterioration and damage during construction and shall store and secure flammable material from fire, remove oily rags, waste, and refuse from buildings each night and during cold weather furnish all heat necessary for the proper conduct of the work.
- e) CONTRACTOR is responsible for reporting and correcting all violations observed, to take all safety precautions, and implement all necessary safety programs in connection with the Work.
- f) TO THE EXTENT PERMITTED BY LAW, CONTRACTOR AGREES THAT IT WILL NOT ASSERT ANY MECHANICS LIEN, OR ANY OTHER LABOR OR MATERIAL LIEN, AGAINST ANY PROPERTY OWNED BY OR IN THE CARE, CUSTODY OR CONTROL OF BAE SYSTEMS TO SECURE PAYMENT OF ANY AMOUNTS THAT MAY BECOME DUE TO CONTRACTOR FOR FURNISHING ANY LABOR OR MATERIAL IN PERFORMANCE OF THIS CONTRACT OR FOR PERFORMING ANY WORK ASSOCIATED THEREWITH. CONTRACTOR UNDERSTANDS THAT BY ACCEPTING THIS CONTRACT IT HAS WAIVED ITS RIGHTS (IF ANY) TO ASSERT A LIEN AND IT WILL BE PRECLUDED FROM EXERCISING THE MECHANICS LIEN RIGHTS IT MAY OTHERWISE BE AFFORDED UNDER APPLICABLE STATE LAW. CONTRACTOR SHALL COOPERATE IN PROVIDING AND FILING ANY WAIVERS AND/OR RELEASES OF LIEN THAT BAE SYSTEMS MAY REQUIRE. IN THE EVENT THAT APPLICABLE LAW DOES NOT PERMIT THE CONTRACTOR'S WAIVER OF LIENS IN ADVANCE, CONTRACTOR AGREES THAT IT SHALL FOREBEAR FROM FILING A LIEN UNLESS AND UNTIL IT COMPLETES THE WORK REQUIRED BY THE CONTRACT AND WILL PROVIDE A RELEASE AND WAIVER SIMULTANEOUS WITH FINAL PAYMENT UNDER THE CONTRACT.

#### 27. REMOVAL OF EQUIPMENT AND CLEANUP

- a) The CONTRACTOR shall at all times keep the construction site, including storage areas, free from accumulations of waste material and rubbish; and prior to completion of the Work remove any rubbish from and about the premises and all tools, scaffolding equipment, and materials not the property of BAE SYSTEMS. Outside clean up work shall be completed prior to time of seasonal landscaping work whether or not included as part of the Work. Upon completion of the construction, the CONTRACTOR shall leave the site in a clean, neat and workmanlike condition satisfactory to BAE SYSTEMS.
- b) Upon the completion of Work, the CONTRACTOR shall remove its equipment, tools, materials, and other articles from the site. Should the CONTRACTOR fail to take prompt action to this end, BAE SYSTEMS (at its option and without waiver of such other rights as it may have) may after thirty (30) days' notice to CONTRACTOR treat them as abandoned property and thereby dispose or use them as it deems appropriate.
- c) If CONTRACTOR fails to clean up at the completion of the Work, BAE SYSTEMS or BAE SYSTEMS' lessees or assigns may do so and the cost thereof shall be charged to the CONTRACTOR and may be deducted from the final payment.

#### 28. CONSTRUCTION SCHEDULE/TIME/DELAYS

- a) The CONTRACTOR shall, prior to commencement of work, prepare and submit for approval a practicable schedule and



report, showing the order in which the CONTRACTOR proposes to carry on the work, the date on which it will start the several salient features of the work (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion at any time and the value associated with the work. Once approved by BAE SYSTEMS, the CONTRACTOR shall be responsible for maintaining, monitoring and submit proposed revisions to the Contract Schedule due to changes made during the performance of the Work as approved by BAE SYSTEMS. All initial information presented will be updated and maintained current. There shall be no change in Contract Schedule without prior written BAE SYSTEMS approval. Costs associated with maintaining satisfactory updated Contract Schedule is the CONTRACTOR's responsibility.

- b) CONTRACTOR shall keep accurate and detailed written records of the progress of the Project during all stages of construction and submit monthly Contract Schedule updates. CONTRACTOR shall maintain a daily detailed log of all events occurring on the Project Site or connected with the progress of the Project.
- c) The CONTRACTOR shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts and overtime operations, as may be necessary to insure the performance of the work in accordance with the approved progress schedule. If, in the opinion of BAE SYSTEMS, the CONTRACTOR falls behind the progress schedule, the CONTRACTOR shall take such steps as may be necessary to improve its progress, and BAE SYSTEMS may require it to increase the number of shifts, overtime operations, days of work, and/or the amount of construction equipment at no additional cost to BAE SYSTEMS. Any direction issued to the CONTRACTOR to provide premium labor in any form must first be coordinated with and approved by the BAE SYSTEMS Procurement Representative or Field Representative. Failure of the CONTRACTOR to comply with the requirements of this provision shall be grounds for determination by BAE SYSTEMS that the CONTRACTOR is not prosecuting the work with such diligence as will insure completion within the time specified in the contract. Upon such determination, BAE SYSTEMS may terminate the Contract, or any part thereof, in accordance with Provision 45, Termination for Convenience.
- d) Acceleration of the Contract Schedule may be requested in writing by BAE SYSTEMS. In such event, a separate summary of the accelerated areas and cost of each, similar in format to those parts of the Contract Documents, is due from the CONTRACTOR if requested by BAE SYSTEMS. Float time used by BAE SYSTEMS is not acceleration or delay. Demands by BAE SYSTEMS that the CONTRACTOR comply with the Contract Schedule (as adjusted under the terms of the Contract Documents) do not constitute an acceleration.
- e) Time is of the essence in the performance of the Work by CONTRACTOR and CONTRACTOR's Subcontractors. CONTRACTOR shall commence performance of the Work immediately upon receipt from BAE SYSTEMS of a separate written instruction to proceed and shall diligently and continuously pursue the Work so as to achieve Substantial Completion of the Work within the Contract Schedule. It is expressly understood and agreed that the time allotted for construction and completion of the Work is reasonable, taking into consideration the five (5) year average climatic conditions as reported at the nearest national weather station and industrial conditions (including,

without limitation, labor conditions and availability) prevailing in the locale of the Project and the type of construction planned. In the event CONTRACTOR fails to complete the Work within the Contract Schedule (as that date may be adjusted under the terms of the Contract Documents), CONTRACTOR agrees to reimburse BAE SYSTEMS all damages and expenses incurred by BAE SYSTEMS due to CONTRACTOR's failure to complete the Work by such time.

- f) In the event that the CONTRACTOR anticipates a delay in performance under this Contract, it shall give written notice therefore to BAE Systems within five (5) working days, stating the reasons for the delay and identifying the actions, which CONTRACTOR is taking to minimize the impact of the delay.
- g) In the event delays in the performance of work under this Contract are due to the fault or negligence of CONTRACTOR, its SUBCONTRACTOR'S or its suppliers, or not otherwise an "excusable delay", CONTRACTOR shall, at its cost, take all necessary measures to recover schedule.
- h) Neither party shall be liable in damages for failure to perform under this Contract due to Excusable Delays (any causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of War, Governmental Act, fires, floods, epidemics, quarantine restrictions, freight embargo, strikes deemed by BAE Systems to be not under the control of the CONTRACTOR, unusually severe weather, or delay of a SUBCONTRACTOR due to such causes unless the materials, supplies, or services to be furnished under the subcontract are reasonably procurable from other sources.)

## 29. USE OF STRUCTURE BEFORE ACCEPTANCE

- a) BAE SYSTEMS or others may, during the performance of the Work, enter the structure for the purpose of performing any necessary Work. In doing so BAE SYSTEMS shall endeavor not to interfere with the CONTRACTOR and the CONTRACTOR shall not interfere with other work being done by or on behalf of BAE SYSTEMS.
- b) If, prior to completion and final acceptance of all the Work, BAE SYSTEMS takes possession of any structure (whether completed or otherwise) comprising a portion of the work with the intent of retaining possession thereof (as distinguished from temporary possession contemplating return to the CONTRACTOR), then, while BAE SYSTEMS is in possession, the CONTRACTOR, notwithstanding any other provision herein, shall be relieved of the responsibility for loss or damage to structure other than that resulting from the CONTRACTOR's fault or negligence. Such taking of possession by BAE SYSTEMS shall not relieve the CONTRACTOR from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.

## 30. WARRANTY AND CORRECTION OF DEFECTS

- a) CONTRACTOR warrants to BAE SYSTEMS that all materials and equipment furnished under the Contract Documents will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by BAE SYSTEMS, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of material and equipment being used in the Work. This warranty shall in no way be limited by the provisions of Paragraph "13 e.1" or "13 e.2" hereof and shall be assignable by BAE SYSTEMS as provided by the Contract.
- b) In addition to any other warranties in this Contract, the CONTRACTOR warrants that Work performed under this

Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the CONTRACTOR or any SUBCONTRACTOR or supplier at any tier.

- c) This warranty shall continue for a period of one (1) year from the date of final acceptance of the entire Work.
- d) The CONTRACTOR shall remedy at the CONTRACTOR's expense, any failure to conform or any defect. In addition, the CONTRACTOR shall remedy, at the CONTRACTOR's expense, any damage to BAE SYSTEMS-owned or controlled real or personal property, when that damage is the result of:
  - i. The CONTRACTOR's failure to conform to Contract requirements; or
  - ii. Any defect of equipment, material, workmanship, or design furnished.
- e) The CONTRACTOR shall restore any Work damaged in fulfilling the terms and conditions of this clause. The CONTRACTOR's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement. This time period relates only to the specific obligation of the CONTRACTOR to correct the Work and has no relationship to the time within which CONTRACTOR'S obligation to comply with the Contract Documents or applicable provisions of law.
- f) BAE SYSTEMS shall notify the CONTRACTOR, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- g) If the CONTRACTOR fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, BAE SYSTEMS shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the CONTRACTOR's expense.
- h) With respect to all warranties, expressed or implied, from SUBCONTRACTOR'S, manufacturers, or suppliers for work performed and materials furnished under this Contract, the CONTRACTOR shall:
  - i. Obtain all warranties that would be given in normal commercial practice;
  - ii. Require all warranties to be executed, in writing, for the benefit of BAE SYSTEMS;
  - iii. Enforce all warranties for the benefit of BAE SYSTEMS.
- i) All SUBCONTRACTOR warranties shall inure to the benefit of BAE SYSTEMS and its assigns.
- j) This warranty shall not limit BAE SYSTEMS' rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.
- k) The remedies provided above shall not be restrictive of, but shall be cumulative and in addition to, all other remedies of BAE SYSTEMS.

### 31. INSPECTION AND ACCEPTANCE

- a) The CONTRACTOR shall provide and maintain an inspection system in accordance with sound business practice and as may be otherwise provided in this Contract.
- b) All material and workmanship furnished by the CONTRACTOR, its SUBCONTRACTOR'S and suppliers shall be subject to inspection, examination and test by BAE SYSTEMS at reasonable times, to the extent practicable, during manufacture or construction

and at any and all places where such manufacture or construction is carried on. BAE SYSTEMS may also inspect the plant or plants of the CONTRACTOR or of any of its SUBCONTRACTOR'S and suppliers engaged in the performance of this Contract. The CONTRACTOR and its SUBCONTRACTOR'S, without additional charge, shall provide promptly all reasonable data, facilities, labor, materials, and assistance for BAE SYSTEMS's inspectors' performance of their duties. All inspections and tests shall be performed in such manner as not to unduly delay the work. The CONTRACTOR shall be charged with any additional cost of inspection when materials and workmanship are not ready at the time specified for inspection. No inspection or test made prior to final inspection and acceptance shall relieve the CONTRACTOR from responsibility for defects or other failure to meet the requirements of this Contract.

- c) If the Contract Documents, laws, ordinances, rules, regulations or orders of any authority having jurisdiction require any Work to be inspected, tested or approved, CONTRACTOR shall give BAE SYSTEMS timely notice of CONTRACTOR's readiness and of the date arranged so BAE SYSTEMS may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted at the direction of authorities having jurisdiction. Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and promptly delivered to BAE SYSTEMS.
- d) Should it be considered necessary or advisable by BAE SYSTEMS at any time before final acceptance of the entire Work to make an examination of work already completed, by removing or tearing out same, the CONTRACTOR shall upon request promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or nonconforming in any material respect, the CONTRACTOR shall defray all the expenses of such examination and of satisfactory reconstruction.
- e) When the CONTRACTOR considers that the Work, or a designated portion thereof which is acceptable to BAE SYSTEMS and is substantially complete as defined herein, the CONTRACTOR shall prepare for submission to BAE SYSTEMS a list of items to be completed or corrected. The failure to include any item on such list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents. When BAE SYSTEMS on the basis of inspection determines that the Work or designated portion thereof is substantially complete, BAE SYSTEMS will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of BAE SYSTEMS and the CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the CONTRACTOR shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to CONTRACTOR for CONTRACTOR's written acceptance of the responsibilities assigned to CONTRACTOR in such Certificate.
- f) BAE SYSTEMS shall have the right to reject defective material or workmanship or to require its correction. Rejected workmanship shall be immediately corrected and rejected material shall be immediately replaced with proper material at CONTRACTOR's sole expense. The CONTRACTOR shall promptly segregate and remove the rejected material from the premises. If the CONTRACTOR fails to proceed at once with the replacement of rejected material or the correction of defective workmanship, BAE SYSTEMS may, at its sole discretion, (i) by contract or otherwise, replace such material or correct such workmanship and charge to the CONTRACTOR the cost occasioned BAE SYSTEMS thereby; (ii) without further notice terminate this Contract for default, in accordance with the clause hereof titled



"Termination for Default"; or (iii) require a reduction in price which is equitable under the circumstances. BAE SYSTEMS may also charge the CONTRACTOR for any additional cost of inspection or test when prior rejection makes reinspection necessary.

- g) When CONTRACTOR deems the Work finally complete, CONTRACTOR shall give BAE SYSTEMS notice thereof in writing. After receipt of such notice, BAE SYSTEMS will determine if the Work has been completed according to the terms of the Contract and, if so, will notify CONTRACTOR in writing of acceptance thereof as provided below. If the Work is incomplete, BAE SYSTEMS will notify CONTRACTOR of the defects and/or omissions, and CONTRACTOR shall repeat the procedure stated herein until the Work has been completed and accepted. BAE SYSTEMS may also charge CONTRACTOR for any costs of additional inspection and/or transportation when rejection makes reinspection necessary.
- h) Final acceptance of the Work will be confirmed by Letter of Acceptance issued by BAE SYSTEMS promptly after being satisfied that all requirements of the Contract have been met, and presentation of a complete and executed Final Release of All Claims against BAE SYSTEMS and Waiver of Lien. In addition to any waiver or release of lien otherwise provided for in the Contract Documents, CONTRACTOR hereby irrevocably waives and releases, and agrees to require an identical waiver and release from all SUBCONTRACTOR'S, any right to claim, assert or pursue any lien or attachment of any nature whatsoever upon any equipment or property owned, leased or used by, or under the control of BAE SYSTEMS.
- i) Neither inspection by BAE SYSTEMS, or by any of BAE SYSTEMS' duly authorized representatives; nor any order, measurement, or certificate by BAE SYSTEMS; nor any order by BAE SYSTEMS for the payment of money; nor final payment hereunder; nor acceptance of any Work or any extension of time; nor any possession taken by BAE SYSTEMS or BAE SYSTEMS' lessees or assigns, shall operate as a waiver of any provision of the Contract Documents of any right of BAE SYSTEMS or others as specified thereunder or of any right to damages under the Contract Documents or under law. Any waiver by BAE SYSTEMS or BAE SYSTEMS' lessees or assigns of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach, and any waiver by BAE SYSTEMS of any right to terminate the Agreement shall not be held to be a waiver or any breach of the Contract Documents, but BAE SYSTEMS and BAE SYSTEMS' lessees or assigns retain all of their rights to recover damages therefor.
- j) In addition to any waiver or release of lien otherwise provided for in the Contract Documents, CONTRACTOR hereby irrevocably waives and releases, and agrees to require an identical waiver and release from all SUBCONTRACTOR'S, any right to claim, assert or pursue any lien or attachment of any nature whatsoever upon any equipment or property owned, leased or used by, or under the control of BAE SYSTEMS.

### 32. SUSTAINABLE DEVELOPMENT

BAE SYSTEMS operates a Sustainable Development Policy. The details of our Sustainable Development Policy can be found at ([www.baesystems.com](http://www.baesystems.com)). We expect and encourage all our suppliers to embrace similar standards to our own and

will work with them to share best practice and stimulate improved performance where needed.

### Section 1D: Liability and Indemnification

#### 33. INDEMNIFICATION

In addition to, and without limiting, the indemnification provisions contained in the BAEDOC(s) applicable to this Contract, the following additional provisions shall apply:

- a) BOTH PARTIES SHALL INDEMNIFY, HOLD HARMLESS AND, AT THE ELECTION OF THE OTHER PARTY, DEFEND THE OTHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND BENEFITS PLANS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS (HEREINAFTER COLLECTIVELY REFERRED TO AS "CLAIMS"), ARISING FROM OR RELATED TO:
  - (1) ANY INJURY, INCLUDING BUT NOT LIMITED TO DEATH, TO ANY PERSON(S), OR DAMAGE TO PROPERTY, ARISING FROM OR RELATED TO OR CAUSED OR CLAIMED TO HAVE BEEN CAUSED BY ACTS OR OMISSIONS OF EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, OR ANY OTHER PERSON OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, WITH RESPECT TO OR IN CONNECTION WITH SERVICES UNDER THIS CONTRACT.
  - (2) ANY CLAIMS, MADE BY CONTRACTOR'S DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS (EXCEPT CLAIMS FOR PERSONAL INJURY OR DEATH ARISING FROM GROSS NEGLIGENCE OR INTENTIONAL TORTS ON THE PART OF BAE SYSTEMS) AGAINST BAE SYSTEMS OR ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS IN EITHER THEIR OFFICIAL OR INDIVIDUAL CAPACITIES.
  - (3) ALLEGED IMPROPER CONDUCT OF ANY NATURE OR TYPE, INCLUDING, BUT NOT LIMITED TO, PHYSICAL, MENTAL OR SEXUAL ABUSE OR HARASSMENT, INVASION OF BODILY INTEGRITY, VIOLATION OF CIVIL RIGHTS, AND/OR DISCRIMINATION, BY OR ATTRIBUTABLE TO ANY OF CONTRACTOR'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR SUBCONTRACTOR'S.
  - (4) CONTRACTOR'S FAILURE TO PAY ANY OF CONTRACTOR'S EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTOR'S, FOR SERVICES RENDERED OR MATERIALS SUPPLIED UNDER THIS CONTRACT.
- b) CONTRACTOR shall notify BAE SYSTEMS as soon thereafter as is practicable, of any Claims arising from or related to subparagraphs 35 (a)(1)-(4) above. CONTRACTOR shall not settle, adjust, or compromise any such claim or any action or proceeding arising therefrom without the written approval of BAE SYSTEMS which shall not be unreasonably withheld. BAE SYSTEMS further agrees to cooperate with any investigation of such Claims and to provide CONTRACTOR any information reasonably available to BAE SYSTEMS (not of a classified, confidential or privileged nature), and reasonably necessary for the investigation or defense of such Claims.
- c) As an additional and independent covenant of the Contract Documents, CONTRACTOR shall procure, as additional protection to BAE SYSTEMS, an independent indemnification and hold harmless agreement from each SUBCONTRACTOR,

providing for the protection set forth in clause "a)" above for the acts or omissions of such SUBCONTRACTOR.

- d) In any and all claims against BAE SYSTEMS by any employee of CONTRACTOR, SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, the indemnification obligation of CONTRACTOR and any SUBCONTRACTOR under clause 35a.1)" and "35.a.2)" shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for them under Workmen's Compensation Acts, Disability Benefit Acts or other employee benefit acts.
  - e) CONTRACTOR shall agree to notify BAE SYSTEMS as soon thereafter as is practicable, of any claim asserted against BAE SYSTEMS arising out of any occurrence covered by insurance policies, and CONTRACTOR shall have the right and opportunity to settle, adjust, compromise, resist or amend such claim or any action or proceeding arising thereafter. BAE SYSTEMS further agrees to cooperate with any investigation of such claim and provide to CONTRACTOR any information to which BAE SYSTEMS has access (not of a classified, confidential or privileged nature), deemed necessary for the investigation or defense of such claim.
34. **BONDS**  
If this Contract exceeds \$25,000 the following provisions apply:
- a) Payment Bonds - The CONTRACTOR shall furnish a payment bond with good and sufficient surety or sureties on an approved BAE SYSTEMS form for the protection of persons furnishing material or labor in connection with the performance of the Work under this Contract. The penal sum of such payment bond shall be 100% of the Contract price.
  - b) Performance Bonds - The CONTRACTOR shall furnish a performance bond with good and sufficient surety or sureties on an approved BAE SYSTEMS form in connection with the performance of the Contract Work. The penal sum of such performance bond shall be 100% of the Contract price.
  - c) Date of Bonds - Bonds required hereunder shall be dated before or as of the same date as this Contract and shall be furnished by the CONTRACTOR to BAE SYSTEMS at the time of execution of this Contract.
  - d) Additional Bond Security - If any surety upon any bond furnished in connection with this Contract becomes unacceptable to BAE SYSTEMS, or if the surety fails to furnish reports as to his financial condition as requested by BAE SYSTEMS, the CONTRACTOR shall promptly furnish additional security as shall be required to protect the interests of BAE SYSTEMS and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.
  - e) Any surety, furnishing a bond hereunder, shall be bound by the terms of the Contract.
  - f) The duty of securing required bonds for this Contract and riders thereto shall be upon the CONTRACTOR.
  - g) In the event any changes, alterations, modifications, or amendments are made from time to time to this Contract or plans or specifications, subsequent to the date of bonds furnished hereunder, the CONTRACTOR shall secure from the Surety a Bond rider to the effect that the Surety waives notice and Right of Discharge by reason of such action.
  - h) Bonds will also contain a provision to the effect that if the CONTRACTOR fails to give the Surety notice of changes, alterations, modifications, or amendments to this Contract,

Surety shall not be released of liability under existing bonds or any riders issued thereto. BAE SYSTEMS shall have the right to withhold any payments due the CONTRACTOR hereunder until such time as the CONTRACTOR secures the bonds required or riders thereto, and the same have been approved by BAE SYSTEMS

- i) If this Contract is \$25,000 or less or the bond is specifically waived by BAE SYSTEMS, the following provision applies:  
In consideration of the waiver of the bond requirement, CONTRACTOR for itself and CONTRACTOR's Sub-CONTRACTOR'S, hereby expressly waives the right to file any lien or claim against the Project Site; further, that if in violation thereof, there shall be any lien, or other claim for monies due or to become due for which if es-tablished, BAE SYSTEMS might be liable, and which would be chargeable to the CONTRACTOR, CONTRACTOR shall immediately satisfy or bond the same, or BAE SYSTEMS shall have the right to bond said lien or claim or otherwise discharge the same and to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify BAE SYSTEMS against such lien or other claim, with interest, together with the expense incident to discharging such lien or claim or defending suit to enforce such lien or other claim, including any premiums charged for a bond and any attorney's fees and disbursement all of which the CONTRACTOR agrees to pay.

### 35. **INSURANCE**

OCIP LANGUAGE (Contractor Insurance requirements only)  
Insurance Requirements:

General Contractor shall purchase and maintain for all times during the performance of the Work and the term of this Agreement and for such extended term as required, at its sole expense, the following insurance, from companies authorized to do business in the state and jurisdiction where the Project is located.

General Contractor must ensure that its Subcontractors or delegates have comparable insurance with limits as shown below, unless the BAE Systems consents in writing to an exception.

Enrolled Parties shall provide the following insurance, as more particularly detailed below:

For all operations off the Project Site (as defined by the OCIP Policies):  
General Liability and Excess Liability insurance;

For all operations, both on and off the Project Site,  
Automobile Liability insurance;  
Workers' Compensation and Employers Liability;  
Excess Liability;  
Pollution Liability;  
Property insurance; and

For all operations both on and off the Project Site after substantial completion of the Enrolled Party's Work: Automobile Liability, Worker's Compensation and Employer's Liability, General Liability and Excess Liability insurance;

Excluded Parties shall provide the following insurance, as more particularly detailed in Section 12:

- For all operations on and off the Project Site:
1. General Liability and Excess Liability insurance;
  2. Automobile Liability insurance;
  3. Workers' Compensation and Employers Liability;
  4. Excess Liability;
  5. Pollution Liability;
  6. Property insurance

Commercial Automobile Liability – Contractor shall provide and carry Automobile Liability insurance, (with no exclusion for terrorism), for all owned, non-owned and hired vehicles with

limits of not less than \$1,000,000 Combined Single Limit each occurrence for bodily injury and property damage to the extent that such vehicles are used to transport employees or other workers and materials to and from Project site. This insurance coverage must include all automotive and truck equipment used in the performance of the Work, both on and off the Project Site, including the loading, unloading and maintenance of such vehicles. The commercial automobile policy shall be further endorsed to:

A waiver of subrogation in favor of BAE Systems, Inc. and its, subsidiaries, directors, officers and employees.  
Include an MCS-90 endorsement if the contractor or subcontractor hauls hazardous materials or waste

Workers' Compensation and Employers Liability - Contractor shall provide and carry Workers' Compensation insurance and Employers Liability insurance, with coverage, limits and coverage extensions as follows:

Workers Compensation insurance complying with the statutory requirements of the jurisdiction in which the Project is located and the Work is performed

Employers Liability insurance with limits of \$1,000,000 bodily injury by accident (each accident); \$1,000,000 bodily injury by disease (policy limit); and \$1,000,000 bodily injury by disease (each employee)

A waiver of subrogation in favor of BAE Systems, Inc. and its, subsidiaries, directors, officers and employees.

All sole proprietors, partners, officers, executives, and members shall not be excluded from coverage. Any person that elects to exclude themselves from coverage shall not be allowed at the Project.

Terms and conditions shall include:

USL&H – where applicable.

Jones Act – where applicable.

All states endorsement - where applicable.

Certificate must clearly identify that coverage applies in the State in which the Project is located.

Commercial General Liability Is this for Off-Site ? - Contractor shall provide and carry "Occurrence Based" Commercial General Liability ("CGL") insurance using the Insurance Service Office (ISO) policy form CG 00 01 04 13 or such form as provides equivalent coverage, (with no exclusion for terrorism), including Broad Form Property Damage, Premises and Operations coverage, Products and Completed Operations coverage, Personal Injury coverage, and Blanket Contractual Liability coverage. Required coverage limits, which will not be eroded by defense costs, will be: \$1,000,000 Per Occurrence; \$2,000,000 General Annual Aggregate (Other than Products/Completed Operations); \$2,000,000 Products/Completed Operations Annual Aggregate; and \$1,000,000 Personal and Advertising Injury Limit per Occurrence and in the Annual Aggregate. The Commercial General Liability Policy shall be further endorsed to:

A waiver of subrogation in favor of BAE Systems, Inc. and its, subsidiaries, directors, officers and employees

The Annual Aggregate shall apply on a per project basis  
Defense costs shall be in addition to and not erode the limits of liability

General liability coverage shall be maintained and the Contractor shall provide completed operations coverage for a period of five (5) years following Final Completion of the Project or for the period equal to the Statute of Repose in the jurisdiction where the Project is located, whichever is longer.

Policies for Contractor and Subcontractors shall not contain exclusions for coverage of any of the following: Multi-Residential Construction, Apartment Construction,

Explosion, Collapse and Underground hazard; contractual coverage for work within 50 feet of railroad property, State and Political subdivision.

Umbrella / Excess Liability - Contractor shall provide and carry an "Occurrence Based" Excess Liability (Umbrella) insurance, (with no exclusion for terrorism), which shall be written on no less than a follow form above the general liability, automobile liability, and employers liability coverages required by this Exhibit. As respects the General Contractor, the minimum required limits will be \$20,000,000 per occurrence and in the annual aggregate, including coverage for Products Liability and Completed Operations. As respects lower tier Subcontractors, the minimum required limits will be \$5,000,000 per occurrence and in the annual aggregate. The Umbrella / Excess Liability Policy shall be further endorsed to:

The Annual Aggregate shall apply on a per project basis  
Defense costs shall be in addition to and not erode the limits of liability

The General Liability, Employers' Liability, and Automobile Liability limit requirements may be met by primary coverage or combination of primary and umbrella/excess liability policies.

Umbrella / Excess Liability coverage shall be maintained and the Contractor shall provide completed operations coverage for a period of five (5) years following Final Completion of the Project or for the period equal to the Statute of Repose in the jurisdiction where the Project is located, whichever is longer.

Policies for Contractor and Subcontractors shall not contain exclusions for coverage of any of the following: Multi-Residential Construction, Apartment Construction, Explosion, Collapse and Underground hazard; contractual coverage for work within 50 feet of railroad property, State and Political subdivision.

Pollution Liability – Contractor shall procure and maintain broad form Contractor's Pollution Liability insurance covering bodily injury, property damage abatement/cleanup, repair and defense costs resulting from liability arising out of pollution conditions. Pollution liability coverage shall have limits no less than the following amounts: \$5,000,000 per occurrence; and \$5,000,000 annual aggregate. The Pollution Liability Policy shall:

Provide pollution coverage for exposures including but not limited to exposures arising from silica, water intrusion, petroleum, petroleum-related products, asbestos, lead paint, tank removal, removal of contaminated soil, EIFS, bacteria, mold, and removal of any other pollutants.

The Pollution Liability insurance shall cover the Contractor's liability during the construction, installation, removal, storage, encapsulation, transport and disposal of hazardous waste. The policy shall include coverage for on-site and off-site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants, or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

A waiver of subrogation in favor of BAE Systems, Inc. and its, subsidiaries, directors, officers and employees.

Pollution Liability coverage shall be maintained and the Contractor shall provide completed operations coverage for a period of five (5) years following Final Completion of the Project or for the period equal to the Statute of Repose in the jurisdiction where the Project is located, whichever is longer.

Professional Errors and Omissions (E&O). If the Agreement includes design or engineering activities, Contractor shall provide Professional Liability Insurance (including but not



limited to contractual liability coverage), with a retroactive date prior to commencement of work on the Project, to cover claims arising out of the performance of professional services caused by the negligent acts, error, or omissions of the Contractor. Contractor shall provide minimum limits of \$1,000,000 per claim and \$3,000,000 in the aggregate. Insurance shall be maintained for a period of not less than three (3) years after final completion of the entire Project (regardless of any earlier completion of the Work) or such longer period as may be required by BAE Systems, Inc. and its subsidiaries, directors, officers and employees. This requirement is satisfied if Contractor requires subcontractors, who are responsible for design or engineering activities, to provide Professional E&O insurance in amounts commensurate with the above, unless BAE consents in writing to an exception; Self-insures when performing design or engineering activities

Property and Contractors equipment insurance. The Contractor shall procure and maintain at the Contractor's own expense, insurance to cover the replacement cost value of all contractor's and contractor's employees owned or leased property tools and equipment brought onto BAE Systems' locations, including but not limited to hoists, sheds, tools, scaffolds and other construction equipment.

#### General Requirements For Contractor-Provided Insurance

The aforementioned Contractor-provided insurance policies must be maintained with insurers having a minimum A.M. Best rating of "A-VII" throughout the term of this Agreement and as otherwise stated herein. All of the aforementioned Contractor-provided insurance coverage shall be primary to and noncontributory with any coverage BAE Systems, Inc. may have. Contractor shall be responsible for all defense costs and deductibles in the event that their policies do not cover same.

All required policies shall provide BAE Systems, Inc. with 30 days' written notice of any cancellation, interruption or material reduction in coverage.

Contractor shall provide BAE Systems, Inc. a Certificate(s) and copies of specific policy forms and endorsement (, Waiver of Subrogation and Written Notice of Cancellation) required herein prior to commencing the Work, evidencing the coverages described herein. Contractor is responsible for ensuring that certificates and endorsements provided to Owner accurately reflect the coverage required herein and are current and in effect for all periods required herein. Replacement Certificates of Insurance shall be provided for all required insurance that is renewed or replaced during the term of this Agreement within five (5) calendar days of renewal or replacement. Certificates of Insurance evidencing the continuation of completed operations coverage for the required period following completion of the Work shall be provided upon any renewal or replacement.

The insurance requirements under this Exhibit are considered minimum. BAE Systems, Inc. assumes no responsibility for the adequacy of the insurance in covering the Contractor and Subcontractors for potential liabilities under this Agreement. Additionally, the requirements for insurance described herein shall in no way be interpreted as relieving, reducing or limiting the Contractor or Subcontractors of any responsibility or liability, including the Contractor's obligation to indemnify and defend BAE Systems, Inc., required under this Agreement.

Should insurance coverage procured by the Contractor and Subcontractors in compliance with these requirements have a reduction in coverage below the minimum requirements, Contractor shall immediately inform BAE

Systems, Inc. of the reduction in coverage and report on the steps taken by the Contractor and Subcontractors to immediately restore coverage at the required levels. For any required coverage that is subject to a Policy Limit of Liability, Contractor shall notify BAE Systems, Inc. that the insurance is subject to a Policy Limit of Liability. Should any required coverage subject to an Aggregate Limit of Liability be eroded, the Contractor shall notify BAE Systems, Inc. of such impairment and shall immediately take steps, at Contractor's sole expense, to restore both per occurrence and aggregate limits of liability to the minimum required amounts. In the event that the Contractor fails to maintain the coverages or limits as required herein, BAE Systems, Inc. has the right, but not the obligation, to purchase the required insurance. Any premiums or costs incurred by BAE Systems, Inc. to affect such coverage shall be payable by the Contractor or offset by any amounts payable to the Contractor.

The acceptance of Certificate(s) of Insurance by BAE Systems, Inc., or its representative, does not constitute approval or agreement by BAE Systems, Inc. that the insurance requirements have been met or that the insurance coverage provided is in compliance with the requirements of this Agreement.

#### 36. BAE SYSTEMS PROPERTY

(Applicable if BAE SYSTEMS property is furnished to the CONTRACTOR under this Contract.)

##### a) BAE SYSTEMS-furnished property.

- (1) BAE SYSTEMS shall deliver to the CONTRACTOR, for use in connection with and under the terms of this Contract, the BAE SYSTEMS-furnished property described in the Schedule of Equipment or specifications together with any related data and information that the CONTRACTOR may request and is reasonably required for the intended use of the property (hereinafter referred to as "BAE SYSTEMS-furnished property").
- (2) The delivery or performance dates for this Contract are based upon the expectation that BAE SYSTEMS-furnished property suitable for use will be delivered to the CONTRACTOR at the times stated in the Schedule or, if not so stated, in sufficient time to enable the CONTRACTOR to meet the Contract's delivery or performance dates.
- (3) If BAE SYSTEMS-furnished property is received by the CONTRACTOR in a condition not suitable for the intended use, the CONTRACTOR shall, upon receipt of it, notify BAE SYSTEMS detailing the facts, and, as directed by BAE SYSTEMS and at BAE SYSTEMS' expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the CONTRACTOR, BAE SYSTEMS shall make an equitable adjustment as provided in paragraph (h) of this clause below. This provision does not apply to property furnished "as is".
- (4) If BAE SYSTEMS-furnished property is not delivered to the CONTRACTOR by the required time, BAE SYSTEMS shall, upon the CONTRACTOR's timely written request, make a determination of the delay, if any, caused the CONTRACTOR and shall make an equitable adjustment in accordance with paragraph (h) of this clause below.

##### b) Changes in BAE SYSTEMS-furnished property.

- (1) BAE SYSTEMS may, by written notice, (i) decrease the BAE SYSTEMS-furnished property provided or to be provided under this Contract, or (ii) substitute other BAE SYSTEMS-furnished property for the property to be provided by BAE SYSTEMS or to be acquired by the CONTRACTOR for BAE SYSTEMS, under this Contract. The CONTRACTOR shall promptly take such action as BAE SYSTEMS may direct regarding the

- removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the CONTRACTOR's written request, BAE SYSTEMS shall make an equitable adjustment to the Contract in accordance with paragraph (h) of this clause below, if BAE SYSTEMS has agreed in the Schedule to make the property available for performing this Contract and there is any -
    - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
    - (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.
- c) Title in BAE SYSTEMS-furnished property.
- (1) BAE SYSTEMS shall retain title to all BAE SYSTEMS-furnished property.
  - (2) Title to BAE SYSTEMS property shall not be affected by its incorporation into or attachment to any property not owned by BAE SYSTEMS nor shall BAE SYSTEMS property become a fixture or lose its identity as personal property by being attached to any real property.
  - (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the CONTRACTOR for BAE SYSTEMS under this Contract shall pass to and vest in BAE SYSTEMS when its use in performing this Contract commences or when BAE SYSTEMS has paid for it, whichever is earlier, whether or not title previously vested in BAE SYSTEMS.
  - (4) If this Contract contains a provision directing the CONTRACTOR to purchase material for which BAE SYSTEMS will reimburse the CONTRACTOR as a direct item of cost under this Contract -
    - (i) Title to material purchased from a vendor shall pass to and vest in BAE SYSTEMS upon the vendor's delivery of such material; and
    - (ii) Title to all other material shall pass to and vest in BAE SYSTEMS upon -
      - (A) Issuance of the material for use in Contract performance;
      - (B) Commencement of processing of the material or its use in Contract performance; or
      - (C) Reimbursement of the cost of the material by BAE SYSTEMS, whichever occurs first.
- d) Use of BAE SYSTEMS property. BAE SYSTEMS property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by BAE SYSTEMS.
- e) Property administration.
- (1) The CONTRACTOR shall be responsible and accountable for all BAE SYSTEMS property provided under this Contract.
  - (2) The CONTRACTOR shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of BAE SYSTEMS property.
- (3) If damage occurs to BAE SYSTEMS property, the risk of which has been assumed by BAE SYSTEMS under this Contract, BAE SYSTEMS shall replace the items or the CONTRACTOR shall make such repairs as BAE SYSTEMS directs. However, if the CONTRACTOR cannot effect such repairs within the time required, the CONTRACTOR shall dispose of the property as directed by BAE SYSTEMS. When any property for which BAE SYSTEMS is responsible is replaced or repaired, BAE SYSTEMS shall make an equitable adjustment in accordance with paragraph (h) of this clause below.
  - (4) The CONTRACTOR represents that the Contract price does not include any amount for repairs or replacement for which BAE SYSTEMS is responsible. Repair or replacement of property for which the CONTRACTOR is responsible shall be accomplished by the CONTRACTOR at its own expense.
- f) Access. BAE SYSTEMS and its designees shall have access to the premises in which any BAE SYSTEMS property is located for the purpose of inspecting the BAE SYSTEMS property.
- g) Risk of loss. Unless otherwise provided in this Contract, the CONTRACTOR assumes the risk of and shall be responsible for, any loss or destruction of, or damage to, BAE SYSTEMS property upon its delivery to the CONTRACTOR or upon passage of title to BAE SYSTEMS under paragraph (c) of this clause above and for any other direct, indirect, special, incidental or consequential damages caused to BAE SYSTEMS on account of such loss, destruction or damage. However, the CONTRACTOR is not responsible for reasonable wear and tear to BAE SYSTEMS property or for BAE SYSTEMS property properly consumed in performing this Contract.
- h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, BAE SYSTEMS may initiate an equitable adjustment in favor of itself. The right to an equitable adjustment shall be the CONTRACTOR's exclusive remedy. BAE SYSTEMS shall not be liable for breach of contract or otherwise for -
  - (1) Any delay in delivery of BAE SYSTEMS-furnished property;
  - (2) Delivery of BAE SYSTEMS-furnished property in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of BAE SYSTEMS-furnished property; or
  - (4) Failure to repair or replace BAE SYSTEMS property for which BAE SYSTEMS is responsible.
- i) Final accounting and disposition of BAE SYSTEMS-furnished property. Upon completing this Contract, or at such earlier dates as may be fixed by BAE SYSTEMS, the CONTRACTOR shall submit, in a form acceptable to BAE SYSTEMS, inventory schedules covering all items of BAE SYSTEMS property (including any resulting scrap) not consumed in performing this Contract or delivered to BAE SYSTEMS. The CONTRACTOR shall prepare for shipment, delivery f.o.b. origin, or dispose of the BAE SYSTEMS property as may be directed or authorized by BAE SYSTEMS. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to BAE SYSTEMS as BAE SYSTEMS directs.
- j) Abandonment and restoration of CONTRACTOR's premises. Unless otherwise provided herein, BAE SYSTEMS:

- (1) May abandon any BAE SYSTEMS property in place, at which time all obligations of BAE SYSTEMS regarding such abandoned property shall cease; and
- (2) Have no obligation to restore or rehabilitate the CONTRACTOR's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the BAE SYSTEMS-furnished property is withdrawn or is unsuitable for the intended use, or if other BAE SYSTEMS property is substituted, then the equitable adjustment under paragraph (h) of this clause above may properly include restoration or rehabilitation costs.
- k) Communications. All communications under this clause shall be in writing.

**37. NOTICE OF LABOR DISPUTES**

- a) CONTRACTOR shall use best efforts to prevent and avoid labor disputes and other labor problems which may affect the Work. Whenever the CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the CONTRACTOR shall immediately give notice thereof, including all relevant information with respect thereto, to BAE SYSTEMS. CONTRACTOR agrees to take any and all measures as appropriate to resolve any labor situation relative to or caused by CONTRACTOR'S work that may negatively impact the timely execution of the work of the CONTRACTOR or work of any other contractor or SUBCONTRACTOR employed by BAE SYSTEMS' SUBCONTRACTOR'S at the Site. Such measures shall include, but not be limited to, successful negotiations with any and all applicable labor unions. CONTRACTOR shall be responsible for all associated costs and shall not be entitled to any relief in the agreed upon project schedule as a result of any such labor situation.
- b) The CONTRACTOR agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the SUBCONTRACTOR shall immediately notify its next higher tier SUBCONTRACTOR or BAE SYSTEMS as the case may be, of all relevant information concerning such dispute.

**38. INTELLECTUAL PROPERTY**

- a) CONTRACTOR warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- b) If an injunction is obtained against BAE SYSTEMS' use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, CONTRACTOR shall either (i) procure for BAE SYSTEMS and Customer the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. The indemnity and hold harmless provision of this Contract shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.

- c) CONTRACTOR grants and agrees that BAE SYSTEMS shall have a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right, to enable BAE SYSTEMS to satisfy its contractual obligations to its Customer, to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all, inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, databases, Software, business information and other information, conceived, developed, generated or delivered in performance of this Contract. CONTRACTOR shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to BAE SYSTEMS herein. To enable CONTRACTOR to comply with the foregoing, CONTRACTOR shall ensure that each of its personnel, workers, representatives, agents and SUBCONTRACTOR'S providing services under this Contract, assign sufficient rights they have in all inventions, works for hire, project results, and the like, to CONTRACTOR.

- d) CONTRACTOR shall promptly deliver to BAE SYSTEMS full disclosures of all data, inventions and works. Such disclosures shall be made or deemed to have been made with complete and exclusive grant to BAE SYSTEMS of all right, title, and interest in and to any such disclosures and the data, inventions and works disclosed herein. Furthermore, BAE SYSTEMS shall be entitled to use any Work product without additional permissions from CONTRACTOR.

**39. REPRODUCTION AND USE OF TECHNICAL DATA**

- a) For use in performance of this Contract, the CONTRACTOR agrees to and does hereby grant to BAE SYSTEMS the right to reproduce, use, and dispose of all or any part of the reports, drawings, blueprints, technical data, computer software, and technical information deliverable or delivered to BAE SYSTEMS pursuant to this Contract, and warrants title to same. The CONTRACTOR agrees to indemnify and hold BAE SYSTEMS and its assigns harmless from any damages, cost, claims and liability arising out of claims that said reproduction, use, or disposition infringes upon third party rights. BAE SYSTEMS shall give the CONTRACTOR prompt notice in writing of any suit or action alleging such liability.
- b) BAE SYSTEMS shall be under no obligation to restrict disclosure or use, or hold in confidence any data, software, or information which is furnished, delivered, or disclosed under this Contract, or in connection herewith, or as a result hereof, either directly or indirectly, unless and until an agreement to hold same in confidence or restrict disclosure or use is accepted in writing by BAE SYSTEMS' authorized Procurement Representative. In the absence of such written agreement, BAE SYSTEMS may ignore and disregard any restrictive legend on any such data and software, which shall be void and of no effect whatsoever. Acceptance by BAE SYSTEMS of data or software with a restrictive legend not in full compliance with the terms of this Contract shall in no way imply or create a waiver of such terms, unless first authorized by the BAE SYSTEMS Procurement Representative by written amendment of this Contract.
- c) CONTRACTOR agrees not to deliver or furnish any data or software subject to limited use or reproduction unless otherwise agreed as specified above.
- d) If any services, articles, or parts thereof, contracted for hereunder are performed or made to data, standards, plans, drawings or designs furnished by BAE SYSTEMS, the CONTRACTOR shall not reproduce, use, or disclose to others any such information without BAE SYSTEMS's written

consent, nor without such written consent, supply or disclose any information regarding any such services or articles, or equipment or any material used therein, nor incorporate in other services, products, or articles any special features of design or manufacture peculiar to the services or articles contracted for under this Contract.

40. **SAFETY AND ACCIDENT PREVENTION**

a) In performing Work under this Contract on BAE SYSTEMS property, the CONTRACTOR is responsible for the safety and health of contractor or SUBCONTRACTOR employees and shall:

- (1) Conform to the specific safety requirements contained in this Contract;
- (2) Comply with the safety rules of BAE SYSTEMS that concern related activities not directly addressed in this Contract;
- (3) Take all reasonable steps and precautions to prevent accidents and preserve the life and health of BAE SYSTEMS and CONTRACTOR personnel performing or in any way coming in contact with the performance of this Contract; and
- (4) Take such additional immediate precautions as BAE SYSTEMS may reasonably require for safety and accident prevention purposes.
- (5) Be responsible for informing all CONTRACTOR and SUBCONTRACTOR employees of any hazards associated with the job site.

b) The BAE SYSTEMS Procurement Representative may, by written order, direct additional safety and accident standards as may be required in the performance of this Contract and any adjustments resulting from such direction will be in accordance with the Changes clause of this Contract.

c) The CONTRACTOR shall be responsible for the identification and marking of all existing subsurface underground utilities in or around any areas of the Work, utilizing "Dig Safe" or an equivalent utility identification/marketing service(s). The CONTRACTOR agrees that all live pipe and conduit lines encountered in the performance of the work under this Contract shall be: 1) protected and supported, 2) cut-off and capped, 3) or re-routed under supervision of persons certified for the appropriate trades, as required. CONTRACTOR shall promptly and properly notify BAE Systems, and other parties involved, and will obtain express written permission and approval from BAE Systems and the other parties involved prior to interfering or beginning work upon such live pipe or conduit lines.

d) The CONTRACTOR shall immediately notify and promptly report to BAE SYSTEMS, any accident, incident or exposure resulting in fatality, lost-time, occupational injury or occupational disease; or, contamination of property or property loss of \$10,000 or more arising out of Work performed under this Contract; provided, however, the CONTRACTOR will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, the CONTRACTOR shall comply with any illness, incident and injury experience reporting requirements set forth in the Contract. The CONTRACTOR will investigate all such work-related incidents or accidents to the extent necessary to positively determine the cause, and furnish BAE SYSTEMS with a report, in such form as BAE SYSTEMS may require, of the investigative findings, together with proposed and/or completed corrective actions.

e) Any violation of these safety rules and requirements, unless promptly corrected as directed by the BAE SYSTEMS Procurement Representative or designated Field Representative, shall be grounds for termination of this Contract in accordance with the Termination for Default clause of this Contract.

f) CONTRACTOR shall be responsible for and hereby agrees to indemnify and save BAE SYSTEMS harmless from any and all:

- (1) damage to the property of BAE SYSTEMS, the CONTRACTOR or other CONTRACTOR'S or SUBCONTRACTOR'S; or
- (2) injury to employees of BAE SYSTEMS, the CONTRACTOR, or other CONTRACTOR'S or subcontracts; or
- (3) for any liability of whatsoever nature arising out of or in connection with the presence of CONTRACTOR or its SUBCONTRACTOR'S pursuant to this Contract.

g) The CONTRACTOR shall cause the substance of this clause including this paragraph g) and any applicable Schedule Provisions to be inserted in subcontracts of every tier which: (i) amount to \$1,000,000 or more unless BAE SYSTEMS makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of \$10,000; or (iii) the CONTRACTOR, regardless of dollar amount, determines that hazardous materials or operations are involved.

h) In any emergency affecting the safety of persons or property, CONTRACTOR shall act, at CONTRACTOR'S discretion, to prevent threatened damage, injury or loss.

41. **CESSATION OF WORK**

a) BAE SYSTEMS' Procurement Representative may order the CONTRACTOR, in writing, to suspend, delay, or interrupt all or any part of the Work of this Contract for the period of time that BAE SYSTEMS determines necessary and appropriate.

b) If CONTRACTOR fails to correct Work which is not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents, BAE SYSTEMS, by written order, signed by the Procurement Representative or assigned Field Representative, may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of BAE SYSTEMS to stop the Work shall not give rise to a duty on the part of BAE SYSTEMS to exercise the right for the benefit of CONTRACTOR or any other person or entity.

c) If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted beyond the period of time stated in Suspension of Work order because of BAE SYSTEMS' failure to act within the time specified, an adjustment shall be made for any increase in the cost of performance of this Contract, excluding profit, necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract shall be modified in writing accordingly. BAE SYSTEMS will not be considered unreasonably suspending, delaying, or interrupting the performance of this Contract if the suspension, delay, or interruption is at the direction of the Federal, State or local government. Additionally, no equitable adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that



performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

- d) An equitable adjustment or claim under this clause shall NOT be allowed: (A) for any costs incurred more than twenty (20) days before the CONTRACTOR shall have notified BAE SYSTEMS, in writing, of the act or failure involved (but this requirement shall not apply as to a claim resulting from the suspension order), and (B) unless the claim, in an amount stated, is asserted in writing as soon as possible after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.
- e) Nothing provided in this clause shall excuse the CONTRACTOR from diligently continuing with performance of Work not suspended, delayed, or interrupted.

#### 42. TERMINATION FOR CONVENIENCE

- a) BAE SYSTEMS may terminate performance of Work under this Contract in whole or, from time to time, in part if BAE SYSTEMS determines that a termination is in BAE SYSTEMS' interest. BAE SYSTEMS shall terminate by delivering to the CONTRACTOR a "Notice of Termination" specifying the extent of termination and the effective date.
- b) After receipt of a Notice of Termination, and except as directed by BAE SYSTEMS Procurement Representative, the CONTRACTOR shall immediately proceed with the following obligations regardless of any delay, in determining or adjusting any amounts due under this clause:
  - (A) Cease Work as specified in the notice;
  - (B) Place no further Subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Contract;
  - (C) Terminate all Subcontracts to the extent they relate to the Work terminated;
  - (D) Assign, as directed by the BAE SYSTEMS Procurement Representative, all right, title, and interest of the CONTRACTOR under the Subcontracts terminated, in which case BAE SYSTEMS shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (E) To the extent required by BAE SYSTEMS, settle all outstanding liabilities and termination settlement proposals arising from the termination of Subcontracts.
  - (F) As directed by BAE SYSTEMS Procurement Representative, transfer title and deliver to BAE SYSTEMS (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced by or acquired for the Work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to BAE SYSTEMS.
  - (G) Complete performance of the Work not terminated.
  - (H) Take any action that may be necessary, or that BAE SYSTEMS Procurement Representative

may direct, for the protection and preservation of the property related to this Contract that is in the possession of the CONTRACTOR and in which BAE SYSTEMS has or may acquire an interest.

- c) The CONTRACTOR shall submit to BAE SYSTEMS a list, certified as to quantity and quality, of termination inventory.
- d) After termination, the CONTRACTOR shall submit a final termination settlement proposal to BAE SYSTEMS Procurement Representative in the form and with the certification prescribed by BAE SYSTEMS. The CONTRACTOR shall submit the proposal promptly, but no later than ninety (90) days from the effective date of termination, unless extended in writing by BAE SYSTEMS Procurement Representative upon written request of the CONTRACTOR within this 90-day period. However, if BAE SYSTEMS Procurement Representative determines that the facts justify it, a termination settlement proposal may be received and acted on after the 90 days or any extension. If the CONTRACTOR fails to submit the proposal within the time allowed, BAE SYSTEMS' Procurement Representative may determine the basis of settlement on information available, the amount, if any, due the CONTRACTOR because of the termination and shall pay the amount determined.
- e) Subject to paragraph "d" above, the CONTRACTOR and BAE SYSTEMS may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. However, the agreed amount, whether under this paragraph "e" or paragraph "f" below may not exceed the total Contract sum as reduced by (i) the amount of payments previously made and (ii) the contract price of Work not terminated. The Contract shall be amended, and the CONTRACTOR paid the agreed amount. Paragraph "" below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- f) If the CONTRACTOR and BAE SYSTEMS fail to agree on the whole amount to be paid the CONTRACTOR because of the termination of Work, BAE SYSTEMS shall pay the CONTRACTOR the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph "" above:
  - (A) For Contract Work performed before the effective date of termination, the total (without duplication of any items) of:
    - (i) the cost of this performed Work;
    - (ii) the cost of settling and paying termination settlement proposals under terminated Subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and
    - (iii) a sum, as profit on (i) above, in effect on the date of this Contract, to be fair and reasonable; however, if it appears that the CONTRACTOR would have sustained a loss on the entire contract had it been completed, this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
  - (B) The reasonable costs of settlement of the Work terminated; and
  - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- g) Except to the extent that BAE SYSTEMS expressly assumed the risk of loss, BAE SYSTEMS shall exclude from the amounts payable to the CONTRACTOR under paragraph "f" above, the fair value, as determined by BAE SYSTEMS Procurement Representative, of Work that is destroyed, lost, stolen, or damaged so as to become undeliverable to BAE SYSTEMS.
- h) In arriving at the amount due the CONTRACTOR under this clause, there shall be deducted:
  - (A) payments to the CONTRACTOR under the terminated portion of this Contract;



- (B) any claim which BAE SYSTEMS has against the CONTRACTOR under this Contract; and
  - (C) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the CONTRACTOR or sold under the provisions of this clause and not recovered by or credited to BAE SYSTEMS.
- i) If the termination is partial, the CONTRACTOR may file a proposal, with BAE SYSTEMS' Procurement Representative, for an equitable adjustment of the continued portion of the Contract. Any proposal, by the CONTRACTOR for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by BAE SYSTEMS' Procurement Representative.
- j) Unless otherwise provided in this Contract or by statute, the CONTRACTOR shall maintain all records and documents relating to the terminated portion of this Contract and provide a copy to BAE SYSTEMS on final settlement. This includes all books and other evidence bearing on the CONTRACTOR's costs and expenses under this Contract. The CONTRACTOR shall make these records and documents available to BAE SYSTEMS without charge. Photographs, microphotographs, or other authentic reproductions may be provided instead of original records and documents.

#### 43. TERMINATION FOR DEFAULT

- a) Time is of the essence of this Contract.
- b) BAE SYSTEMS may, by written notice, without prejudice to any other rights or remedies and without notice to sureties, terminate all or a portion of the Contract if the CONTRACTOR:
  - (A) refuses or fails to supply enough properly skilled workers or proper materials;
  - (B) fails to make payment to SUBCONTRACTOR'S for materials or labor in accordance with the respective agreements between the CONTRACTOR and the SUBCONTRACTOR'S;
  - (C) disregards laws, ordinances, rules, regulations or orders of a public authority having proper jurisdiction;
  - (D) otherwise is guilty of breach of any provision of Contract Documents;
  - (E) refuses or fails to prosecute the Work, or any separable part thereof, or to perform other requirements under this Contract, with such diligence as will insure Project completion within the time specified in this Contract, or any extension thereof; or
  - (F) fails to complete the Work within the time set forth in the Contract Schedule;

In such event BAE SYSTEMS may take over the Work under this contract and prosecute the same to completion, by contract or otherwise and BAE SYSTEMS may take possession of and use any materials, appliances, and plant on the Project Site necessary for completing the Work and the CONTRACTOR and CONTRACTOR's sureties shall be liable to BAE SYSTEMS for any excess cost occasioned to BAE SYSTEMS thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying documents, until such reasonable time as may be required for the final completion of the Work, or if liquidated damages are not so fixed, actual damages occasioned by such delay.

- c) No exercise by BAE SYSTEMS of BAE SYSTEMS' right to take over and terminate the Work, in whole or in part, under this contract shall operate as a waiver of any other BAE SYSTEMS' rights, or prevent BAE SYSTEMS from

exercising such rights, and the right of BAE SYSTEMS to so act is without prejudice to BAE SYSTEMS' rights and without waiver of the liabilities and obligations of CONTRACTOR or any SUBCONTRACTOR'S, as the case may be, nor shall such act impair the right of BAE SYSTEMS to specific performance, injunction, any other equitable remedy or right to money damages under this contract.

- d) If BAE SYSTEMS does NOT terminate the right of the CONTRACTOR to proceed, as provided above, the CONTRACTOR shall continue the Work not terminated, in which event CONTRACTOR's sureties shall be liable to BAE SYSTEMS, in the amount set forth in the specifications, or accompanying documents, for fixed, agreed, liquidated damages for each calendar day of delay until the Work is completed or accepted, or if liquidated damages are not so fixed, actual damages occasioned by such delay.

- e) The right of the CONTRACTOR to proceed shall not be terminated, as provided in paragraph "b" above, nor the CONTRACTOR charged with liquidated or actual damages, as provided in this paragraph because of any delays in the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to: (A) acts of God or the public enemy, (B) acts of the Government in the Government's sovereign capacity, (C) acts of another contractor in the performance of a contract with BAE SYSTEMS, (D) fires, (E) floods, (F) epidemics, (G) quarantine restrictions, (H) freight embargoes, (I) unusually severe weather, or (J) delays of SUBCONTRACTOR'S or suppliers due to such specified causes herein; provided, that the CONTRACTOR shall within ten (10) days from the beginning of any such delay, notify BAE SYSTEMS Procurement Representative in writing of the specific cause of delay.

- f) BAE SYSTEMS shall ascertain the facts and the extent of the delay. If BAE SYSTEMS so determines the facts warrant such action, the time for completing the Work may be extended. The findings of BAE SYSTEMS shall be final and conclusive on the parties, but subject to appeal under the Disputes Clause.
- g) If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".

#### Limitation on Damages:

46 Except as otherwise provided in this Subcontract, in the event of either Party's failure to perform in accordance with this Subcontract, whether such failure is occasioned by the acts or omissions of either Party, its respective suppliers, or the BAE Parties, either Party may pursue any and all damages and remedies available under this Agreement and/or applicable law. Except as otherwise provided in this Subcontract, damages and remedies that may be recovered by either Party shall be limited as follows: For all claims, regardless of the basis on which the claim is made, the applicable party's liability for damages arising under or related to this Subcontract shall be limited to the Subcontract Price for the goods or services to be provided by Subcontractor, "Subcontract Price" being defined as the cumulative value of Subcontract including all changes. Except as otherwise provided in this Subcontract, neither Party shall be liable for any indirect, special, incidental or consequential damages, including but not limited to lost profits or business interruption losses, whether arising under contract, warranty, express or implied tort, including negligence, or strict liability, arising at any time from any cause whatsoever in connection with this Subcontract or performance hereunder, even if caused by the sole or concurrent or active or passive negligence, strict liability or other legal fault of either of the Parties, their members, directors, officers, employees, agents, representatives, parent companies, subsidiaries, affiliates, joint venture partners, successors and assigns, and each of their respective owners, partners, members, shareholders, directors, managers, officers, employees, agents, representatives and subcontractors at any tier.

**SECTION II: Additional Requirements for  
Subcontracts/Purchase Orders under a U.S. Government  
Prime Contract**

**1. PRIORITY RATING**

- a) If so identified, this Contract is a "rated order" certified for national defense use, emergency preparedness, and energy program use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700).
- b) Levels of priority: There are two levels of priority established by this regulation, identified by the rating symbols "DO" and "DX". All DX rated orders take preference over DO rated orders and unrated orders. Customer notification requirements. (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of this section, in writing (hard copy) or electronic format.

**2. COMMUNICATION WITH THE GOVERNMENT**

- a) BAE SYSTEMS shall be solely responsible for all liaison and coordination between BAE SYSTEMS and the Government as it affects the Prime Contract between BAE SYSTEMS and the Government, as well as on all matters pertaining to this Contract, by and between BAE SYSTEMS and the CONTRACTOR, any associated CONTRACTOR'S, and any designated BAE SYSTEMS SUBCONTRACTOR'S.
- b) Unless otherwise directed in writing by the authorized BAE SYSTEMS Procurement Representative charged with responsibility for the administration of this Contract, all documentation requiring submittal to, or action by, the Government or the Contracting Officer shall be routed to, or through, the BAE SYSTEMS Procurement Representative. Significant informal communications between BAE SYSTEMS and the CONTRACTOR shall be confirmed in writing at the earliest practical date and copies submitted to both Parties.

**3. SUPPLEMENTAL TERMS AND CONDITIONS**

The following supplemental terms and conditions are hereby incorporated by reference, and shall also apply to this Contract: USGOVA-CON "FAR/DFARS/NAVSEA" or Any additional or supplemental terms and conditions that are required to be flowed down from BAE SYSTEMS' prime contract(s) shall be provided as a note on the face of this Contract or as Special or Additional Provisions to the Contract.

**4. SURVIVABILITY**

Those U. S. Government flowdown provisions that by their nature should survive.

**5. APPLICABLE LAWS**

- a) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if CONTRACTOR or its lower-tier SUBCONTRACTOR'S: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon BAE SYSTEMS' request to provide cost or pricing data, submit cost or pricing data, whether

certified or not certified at the time of submission, as a prospective SUBCONTRACTOR, and any such data are defective as of the applicable cutoff date on BAE SYSTEMS' Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; and/or (v) if the U.S. Government alleges any of the foregoing, and, as a result: (1) BAE SYSTEMS' contract price or fee is reduced; (2) BAE SYSTEMS' costs are determined to be unallowable; (3) any fines, penalties or interest are assessed on BAE SYSTEMS; and/or (4) then BAE SYSTEMS incurs any other costs or damages; BAE SYSTEMS may proceed with an offset reduction of corresponding amounts (in whole or in part) due CONTRACTOR under this Contract or any other contract with CONTRACTOR, and/or may demand payment (in whole or in part) of the corresponding amounts. CONTRACTOR shall promptly pay amounts so demanded.

- b) Unless specifically identified otherwise on a PO or under a master-type agreement, which is part of this Contract, all matters arising from or related to it shall be governed by and construed in accordance with the law of the State from which this Contract is performed, excluding its choice of law rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); and/or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; and/or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the U.S. federal common law of government contracts as enunciated and applied by U.S. federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the U.S. federal Government.

- c) If this Contract is for a Commercial Item, CONTRACTOR represents and warrants that the Work provided under this Contract constitutes a "Commercial Item" as defined in FAR 2.101.

- d) By accepting this Contract, CONTRACTOR certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

**6. RECORDS**

CONTRACTOR understands and agrees that BAE Systems may seek reimbursement from the U.S. Government and that, therefore, access to records, and audit by authorized representatives of the U.S. Government is a material condition of this Contract, and CONTRACTOR shall cooperate with any such request for access or audit of the records by the U.S. Government. CONTRACTOR further agrees to include this clause or an equivalent in all subcontracts or purchase orders issued under this Contract.

**7. CAS NONCOMPLIANCE**

Award of this Contract does not constitute a determination that the CONTRACTOR's disclosed and applied accounting practices used in pricing this Contract are in compliance with the Cost Accounting Standards (CAS) (if CAS is applicable). BAE SYSTEMS retains its right to adjust the Contract price under the CAS clauses of this Contract if a subsequent final determination of noncompliance is made by the Government.

**8. FOREIGN SALES**

If the supplies or services provided pursuant to this PO are intended for incorporation in, or use in connection with, military equipment to be used by the armed forces of a foreign government or international organization, the following clause applies:

"The articles or services to be supplied under this PO are intended for incorporation in, or use in connection with, military equipment to be used by the armed forces of a foreign government or an international organization. Part 130 of the International Traffic in Arms Regulations (ITAR), 22 CFR Part 130, requires BAE SYSTEMS to report if CONTRACTOR has made, makes or intends to make any payment, loan or donation of \$1,000 or more either as a political contribution or as a fee or commission in connection with the sale of the articles or services described in this PO, or an end item incorporating such articles. Accordingly, Seller agrees to promptly notify BAE SYSTEMS in writing if it has made, intends to make, or upon the making of, any payment, loan or donation required to be reported under Part 130 of ITAR, and CONTRACTOR agrees to furnish BAE SYSTEMS with information with respect to any such payment to enable BAE SYSTEMS to comply with the reporting requirements of Part 130 of ITAR. CONTRACTOR agrees to include this clause in all subcontracts of \$250,000 or more made hereunder. BAE SYSTEMS will furnish to CONTRACTOR a copy of Part 130 of ITAR on request."

SYSTEMS and Seller, if BAE SYSTEMS shall have afforded Seller an opportunity to participate in proceedings before such Adjudicative Bodies.

In the event that a contracting officer under BAE SYSTEMS' higher-tier contract renders any decision whereby any action or failure to act on the part of Seller is held to render BAE SYSTEMS in default of its obligations under such higher-tier contract, such decision shall be binding upon Seller; if BAE SYSTEMS shall afford Seller an opportunity to participate in proceedings before an appropriate Adjudicative Body.

In no event shall decisions of Adjudicative Bodies contemplated by this clause determine issues of fact or of law between BAE SYSTEMS and Seller not cognizable before such Adjudicative Bodies.

#### **9. GOVERNMENT INSPECTION AT SOURCE**

In the event that Government inspection at source is a requirement of this PO, CONTRACTOR shall furnish a copy of this PO to the Government Quality office that normally services CONTRACTOR's plant or to the nearest Government Quality office in CONTRACTOR's locality. If the cognizant Government Quality office cannot be located, CONTRACTOR shall notify BAE SYSTEMS immediately. The following applies to purchase orders for NASA contracts:

All work on this order is subject to inspection and test by the Government at any time and place. The Government quality representative who has been delegated NASA quality assurance functions on this procurement shall be notified immediately upon receipt of this order. The Government representative shall also be notified forty-eight (48) hours in advance of the time articles or materials are ready for inspection or test.

#### **10. OCEAN TRANSPORT OF GOVERNMENT-OWNED SUPPLIES**

The CONTRACTOR shall advise BAE SYSTEMS of any proposed transportation by ocean vessels of Government-owned property in the possession of CONTRACTOR or his subcontractors (including pCONTRACTOR property under which title will pass to BAE SYSTEMS or the Government prior to such transportation) in the performance of this PO. Such property shall subsequently be transported only on United States-flag vessels as directed by BAE SYSTEMS.

#### **11. CONTROVERSIES**

In the event that Seller asserts any claim against BAE SYSTEMS for additional compensation or damages for breach of contract; and if such claim, if valid, would entitle BAE SYSTEMS to relief, in whole or in part, under BAE SYSTEMS' higher tier contract; Seller shall institute no action or suit against BAE SYSTEMS in any court; until BAE SYSTEMS has exhausted its remedies (unless not otherwise timely pursued) under such higher tier contract before any relevant contracting officer, board of contract appeals, and courts (hereinafter collectively "Adjudicative Bodies"); and the findings of fact and conclusions of law of such Adjudicative Bodies, if BAE SYSTEMS shall have afforded Seller an opportunity to participate in proceedings before such Adjudicative Bodies, shall be binding as collateral estoppel on BAE SYSTEMS and Seller. On all other issues, the findings of fact and conclusions of law of such Adjudicative Bodies shall be binding as collateral estoppel upon BAE